

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 2. ARIZONA COMMISSION ON THE ARTS

PREAMBLE

1. **Sections Affected**

Article 1	<u>Rulemaking Action</u>
R2-2-101	New Article
R2-2-102	New Section
	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 41-986

Implementing statute: None
3. **The effective date of the rules:**

September 21, 1998
4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 3 A.A.R. 2307, August 27, 1998

Notice of Proposed Rulemaking: 4 A.A.R. 1040, May 8, 1998
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mollie Lakin-Hayes

Address: 417 West Roosevelt Street
Phoenix, Arizona 85003

Telephone: (602) 255-5882

Fax: (602) 256-0282
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The rule identifies private monies that will be considered match to the Arizona Arts Endowment Fund (known as Arizona Art-Share), and describe the mechanisms that will be used to collect private monies. The rule was initiated by the Commission as mandated by the Arizona Legislature when it created the Arizona Arts Endowment Fund.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
8. **The summary of the economic, small business, and consumer impact:**

Several state agencies will experience a minimal increase in staff time, with progressively increasing revenue for the Arizona Commission on the Arts and State Treasurer; specific public entities (educational institutions, cities and counties) will experience minimal increases in staff time, and moderate to substantial revenue increases; private entities (specifically community foundations) will experience moderate increases in staff time and substantial revenue increases; private donors will experience, by choice, increased cost through substantial fiscal support to arts organizations; and non-profit arts organizations will experience, with minimal increases in staff time, substantial revenue increases. Direct impact to small business and consumers is not anticipated.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Not applicable.

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10. A summary of the principal comments and the agency's response to them:
None.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rules or class of rules:
None.
12. Incorporations by reference and their location in the rules:
None.
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 2. ARIZONA COMMISSION ON THE ARTS

**ARTICLE 1. MATCHING PRIVATE MONIES WITH
MONIES FROM THE ARIZONA ARTS ENDOWMENT
FUND**

Section

- R2-2-101 Definitions
R2-2-102 Matching Private Monies

**ARTICLE 1. MATCHING PRIVATE MONIES WITH
MONIES FROM THE ARIZONA ARTS ENDOWMENT
FUND**

R2-2-101. Definitions

In this Article, unless the context otherwise requires:

"Arizona Arts Endowment Fund" means the fund established in A.R.S. § 41-986.

"Arts Organization" means an organization that has applied for and received on-profit status under 501(c)(3) of the U.S. internal revenue code and whose primary mission is to produce, present, or serve the arts.

"Commission" means the Arizona Commission on the Arts.

"Donor-advised Fund" means monies donated to a community foundation, over which the donor or others designated by the donor retain the right to advise on grants from the fund.

"Field-of-interest Fund" means monies donated to a community foundation, that the donor restricts to grants in a specific charitable field.

"Large and Mid-Sized Arts Organizations" means non-profit Arizona arts organizations currently participating in Organization Development Program Level III, Basic Aid or Locals Aid grants programs of the Arizona Commission on the Arts.

"Matching Funds" means non-state monies collected which can be considered a match to the Arizona Arts Endowment Fund. These include monies considered "Other Government Endowment for the Arts" and "Private Monies."

"Other Government Endowment for the Arts" means an endowment of a community college, university, city or county local arts agency.

"Private Monies" means revenue from sources other than state tax funds such as cash or securities, irrevocable deferred gifts, lead trusts, real estate, or other items

that are convertible to cash. The cash value of an irrevocable deferred gift is its present value.

"Programs" means arts activities or presentations which are promoted to the public.

"Tangible Personal Property" means an item under personal ownership that can be touched or felt, such as a car, boat, artwork, and jewelry.

R2-2-102. Matching Private Monies

A. The Commission shall consider private monies to be a match to the Arizona Arts Endowment Fund if the private monies are contributed as follows:

1. The donor enters into a written agreement with an endowment fund to dedicate the monies permanently,
2. The donor designates the monies to the Arizona Arts Endowment Fund or to an endowment fund of a 501(c)(3) arts organization,
3. The donor designates the monies to the endowment fund of an arts organization, except as provided in subsection (B); or
4. The donor designates the monies to another government endowment fund for the arts that agrees to:
 - a. Re-grant monies to arts programs, and
 - b. Use none of the monies to support for-credit classes.

B. The Commission shall not consider a donation to be a match to the Arizona Arts Endowment Fund if the donation is to an arts organization and:

1. Is tangible personal property; or
2. Is intended for use by the arts organization for its annual operating budget.

C. The Commission shall consider monies in a donor-advised fund or a field-of-interest for the arts fund the same as all other monies donated in compliance with subsection (A).

D. Funds may be held, accounted for, and named individually.

E. The Commission may enter into written agreements with one or more 501(c)(3) community organizations to collect, invest and manage private monies. The contracted organization shall report, on a quarterly basis, the collection of, investment of, and return on such monies, to the Commission.

F. The Commission shall require annual written financial reports from arts organizations receiving monies from the Commission. The reports shall include a statement of the amount of monies received by any endowment which may be matching funds.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

PREAMBLE

1. **Sections Affected**

Article 4	<u>Rulemaking Action</u>
R4-38-401	New Article
R4-38-402	New Section
R4-38-403	New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-2904(B)(1)

Implementing statute: Title 41, Chapter 6, Article 7.1, Licensing Time-Frames
3. **The effective date of the rules:**

September 24, 1998
4. **A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 4 A.A.R. 475, February 13, 1998

Notice of Proposed Rulemaking: 4 A.A.R. 580, February 27, 1988
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Jean Ellzey, Executive Director

Address: 1400 West Washington, Room 230
Phoenix, Arizona 85007

Telephone: (602) 542-3095

Fax: (602) 542-3093
6. **An explanation of the rule, including the agency's reason for initiating the rule:**

R4-38-401: The rule defines terms used throughout this Article.

R4-38-402: The rule defines the administrative and substantive review process and time-frames for initial licensing of homeopathic physicians, issuance of dispensing permits, and registration of experimental protocols, medical assistants, and practical courses for the training of medical assistants.

R4-38-403: The rule defines the administrative and substantive review process and time-frames for renewal of homeopathic physician licenses, dispensing permits, and registration of experimental protocols, medical assistants, and practical courses for the training of medical assistants.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.
8. **The summary of the economic, small business, and consumer impact:**

Since the rules describe the Board's usual procedures over the past several years, this rule will have no discernible economic impact on small businesses or consumers.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Minor stylistic, grammatical and punctuation changes were made at the request of the Governor's Regulatory Review Council staff and the Secretary of State.
10. **A summary of the principal comments and the agency response to them:**

No comments were received and therefore no agency response was made.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.
12. **Incorporations by reference and their location in the rules:**

Not applicable.
13. **Was this rule previously adopted as an emergency rule?**

No.

14. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

ARTICLE 4. APPLICATION AND RENEWAL PROCESS:
TIME-FRAMES

Section

R4-38-401. Definitions

R4-38-402. Application: Initial License, Permit or Registration

R4-38-403. Application: Renewal of License, Permit or Registration

ARTICLE 4. APPLICATION AND RENEWAL PROCESS:
TIME-FRAMES

R4-38-401. Definitions

In this Article, the following terms apply:

1. "Application period" means 365 days, starting from the date an initial application and fee are received in the Board office under A.R.S. § 32-2912(F)(3) and (4).
2. "Deficiency notice" means a written, comprehensive list of missing information or documents.
3. "Prescribed fee" means a fee permitted by A.R.S. § 32-2914 or prescribed by R4-38-104.
4. "Serve" means sending the document by U.S. Mail to the last address provided by the applicant.
5. "Staff" means any person employed or designated by the Board to perform administrative tasks.

R4-38-402. Application: Initial License, Permit or Registration

A. An applicant shall submit to the Board office a signed, notarized application form, the contents of which are described by A.R.S. Title 32, Chapter 29 and 4 A.A.C. 38; any supporting information required; and the prescribed fee. Within 90 days after receipt of an initial application package, staff shall finish an administrative completeness review.

1. If the application package is complete, staff shall serve the applicant with a written notice of administrative completeness informing the applicant of the date, time, and place of the Board's consideration of the application.
2. If the application package is deficient, staff shall serve the applicant with a written deficiency notice. The 90-day time-frame for staff to finish the administrative completeness review is suspended from the date the deficiency notice is served until all missing information is received.

B. Except as otherwise provided by law, the applicant shall provide all missing information within 180 days after the date on the deficiency notice, including information from other agencies, institutions, and persons. The written examination prescribed in R4-38-105 is included within the 180 days.

C. Within 90 days after receipt of a complete initial application package, the Board shall render a decision on the initial license, permit, or registration. The oral examination and interview prescribed in R4-38-106 is included within the 90 days.

1. If the Board finds the applicant meets the licensing requirements, the Board shall grant a license effective on the date that the Board receives the license issuance fee. If no license fee is required, the Board shall grant the permit or registration, which is effective on the date granted.

2. If the Board finds the applicant does not meet the licensing requirements, the Board shall issue a written notice of denial of license.

3. If the Board determines that there are substantive deficiencies in the application, the Board shall serve a single comprehensive written request for additional information.

4. The 90-day substantive review time-frame is suspended from the date on the request for additional information until the date that all requested information is received. Except as otherwise provided by law, the applicant shall provide the requested information within 60 days from the date on the notice.

D. If an applicant fails to provide the information required in subsections (B) and (C), the Board shall determine whether to deny the application or to consider it withdrawn under A.R.S. § 32-2912(F).

R4-38-403. Application: Renewal of License, Permit, or Registration

A. On or before the deadlines prescribed in A.R.S. § 32-2915(D), an applicant for renewal of a license, permit or registration shall submit to the Board a renewal application form, the contents of which are prescribed by A.R.S. Title 32, Chapter 29 and 4 A.A.C. 38, and the appropriate fees.

B. Within 30 days after receipt of a renewal application package, staff shall notify the applicant that the package is either complete or deficient.

1. If the application package is complete, staff may serve the applicant with a written notice of administrative completeness. If the notice of administrative completeness is not served within 30 days after receipt of a renewal application package, the package is deemed complete.

2. If the renewal application package is deficient, staff shall serve the applicant with a written deficiency notice. The 30-day time-frame for staff to finish the administrative completeness review is suspended from the date the deficiency notice is served until all missing information is received.

C. Except as otherwise provided by law, an applicant for renewal shall provide all missing information within 10 days after the date on the deficiency notice or by the applicable deadline prescribed in A.R.S. § 32-2915, whichever is later.

D. Within 90 days of receipt of a complete renewal application package, the Board shall either issue a license renewed notice, showing the effective year of renewal, or conduct a substantive review of those renewal applications which, when considered alone or in conjunction with additional information, raise a concern that the applicant's conduct may be in violation of A.R.S. Title 32, Chapter 29. The Board shall investigate and resolve such a concern under A.R.S. § 32-2934.

E. If an applicant for renewal fails to provide the missing information required by subsection (C), the license, permit, or registration expires effective January 1 of the renewal year for which the application was made and the Board shall not refund any renewal fees paid for that year.

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TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

1. Sections Affected
R14-4-146
R14-4-147
- Rulemaking Action
New Section
New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. § 44-1821
Implementing statute: A.R.S. §§ 41-1072 through 41-1078
Constitutional authority: Arizona Constitution Article XV §§ 4, 6 and 13
3. The effective date for the rules (if different from the date the rules are filed with the Office):
September 17, 1998
4. A list of all previous notices appearing in the Register addressing the final rule:
Notices of Docket Opening: 3 A.A.R. 2484, September 5, 1997 (R14-4-146)
3 A.A.R. 2484, September 5, 1997 (R14-4-147)
Notice of Proposed Rulemaking: 4 A.A.R. 993, May 1, 1998 (R14-4-146, R14-4-147)
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Brian J. Schulman, General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, 3rd Floor
Phoenix, Arizona 85007
Phone: (602) 542-4242
Fax: (602) 594-7406
6. An explanation of the rules, including the agency's reasons for initiating the rules:

The rules establish time-frames within which the Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") shall process the initial and renewal applications for the registration and exemption of securities offerings, and the registration of securities dealers and salesmen. The rules are mandated by A.R.S. § 41-1072, *et seq.* (the "time-frame statutes"), which require any state agency that issues licenses to promulgate final rules establishing the time-frames during which the agency will either grant or deny each type of license that the agency issues.

Each of the rules incorporates certain categories of time-frames created by the time-frame statutes. Under the time-frame statutes, each agency shall establish an "overall time-frame," which consists of 2 components: (i) an "administrative completeness review time-frame"; and (ii) a "substantive review time-frame." The time-frame statutes define the administrative completeness review time-frame to mean the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by law. The time-frame statutes define the substantive review time-frame as the number of days after the completion of the administrative completeness review time-frame during which an agency determines whether an application meets all substantive criteria required by law. The rules establish separate time-frames for each of these components.

R14-4-146. Rule R14-4-146 ("Rule 146") establishes time-frames within which the Division shall process the initial and renewal applications for the registration or exemption of securities offerings. Rule 146 contemplates 3 potential processing tracks, each with its own time-frames. All 3 tracks share an administrative completeness review time-frame of 60 days. The Commission then has 60 days after receipt of the completed application to approve the application or initiate the denial process by filing a notice of an opportunity for hearing. If the Commission approves the application, the process effectively is over. If the Commission initiates the denial process, it shall file a notice of an opportunity for hearing. If the applicant does not request a hearing, then the Commission shall approve or deny the application within 70 days. If the applicant requests a hearing, it shall do so within 10 days. The Commission then shall approve or deny the application within 210 days. The latter time-frame contemplates time for the following: (i) an administrative hearing; (ii) a recommended order from the hearing officer; and (iii) a final order from the Commission. In sum, there are 3 overall time-frames. Where the Commission approves the application, the overall time-frame is 120 days. Where the Commission recommends a denial of the application and no hearing is requested, the overall time-frame is 190 days. Where the Commission recommends a denial of the application and a hearing is requested, the overall time-frame is 340 days.

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There are certain existing rules and statutes under the Securities Act of Arizona that already provide time-frames for the processing of securities applications. In accordance with the time-frame statutes, for those time-frames already in use, Rule 146 divides those existing time-frames into the administrative and substantive time-frames. The breakdown for those existing time-frames is included in Table A of Rule 146.

R14-4-147. Rule R14-4-147 ("Rule 147") establishes time-frames in which the Division shall process applications for dealer and salesman registration. Rule 147 addresses separately dealer and salesman registration. With respect to dealer registration, Rule 147 contemplates 3 potential processing tracks, each with its own time-frames. All 3 tracks share an administrative completeness review time-frame of 42 days. The Commission then has 60 days after receipt of the completed application to approve the application or initiate the denial process by filing a notice of an opportunity for hearing. If the Commission approves the application, the process effectively is over. If the Commission initiates the denial process, it shall file a notice of an opportunity for hearing. If the applicant does not request a hearing, then the Commission shall approve or deny the application within 70 days. If the applicant requests a hearing, it shall do so within 10 days. The Commission then shall approve or deny the application within 210 days. The latter time-frame contemplates time for the following: (i) an administrative hearing; (ii) a recommended order from the hearing officer; and (iii) a final order from the Commission. In sum, there are 3 overall time-frames. Where the Commission approves the application, the overall time-frame is 102 days. Where the Commission recommends a denial of the application and no hearing is requested, the overall time-frame is 172 days. Where the Commission recommends a denial of the application and a hearing is requested, the overall time-frame is 322 days.

Rule 147's time-frames for salesman registration are similar to the dealer registration time-frames, with one exception. With respect to salesman registration, the administrative completeness review time-frame is 60 days, instead of 42. As such, where the Commission approves a salesman's registration, the overall time-frame is 120 days. Where the Commission recommends a denial of the application and no hearing is requested, the overall time-frame is 190 days. Where a hearing is requested, the overall time-frame is 340.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. **The summary of the economic, small business and consumer impact:**

The economic, small business and consumer impact statement for the time-frame rules analyzes the costs, savings, and benefits that accrue to the Commission, Secretary of State, registrants, and the public. With the adoption of the proposed rules, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The benefits to the Commission are minimal. The estimated additional cost to the Secretary of State's office is minimal. This additional cost stems from the Secretary of State's staff time publishing the rules. The benefits provided by the proposed rules are non-quantifiable. The rules should benefit the Commission's relations with the regulated public by preventing misunderstandings about the time necessary for registration. The public will benefit from clear and concise standards for the registration process.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules:**

The Commission made certain technical and grammatical changes to the rules in response to a May 1, 1998 memorandum from the Office of the Secretary of State. There were no substantive changes made.

10. **A summary of the principal comments and the agency response to them:**

The Commission received written comments from 2 members of the local securities bar and the Securities Industry Association. The Commission also accepted oral comments from 2 local securities bar members (one of whom also commented in writing) at the public comment hearing. Generally, the comments supported the time-frame rules; however, the comments did request shorter administrative completeness review and substantive review time-frames for three scenarios: (i) securities offerings that are registered with the Securities and Exchange Commission ("SEC"); (ii) securities offering renewals; and (iii) applications for securities salesmen with "clean" disciplinary histories who are transferring firms. The Division acknowledged that there are scenarios where applications can and will be processed in shorter periods of time than allowed for under the rules; however, the Division also noted that there would be scenarios requiring all, if not more, of the allotted time under the rules. The Division was not in favor of amending the rules to address each such scenario. The Division created as few time-frames as possible in an attempt to simplify the processing for both the Division and the applicants. The Division deliberately drafted broad, versatile time-frames to cover the various subcategories that fall within the different types of registrations processed by the Division.

The Division and those who commented on the rules agreed to a compromise 1st suggested by the hearing officer. The Division agreed to propose to the Commission an internal statement of procedure that would direct staff of the Division to process the 3 applications identified above in an "expedited" manner. Acknowledging the proposed statement of procedure, the hearing officer recommended to the Commission that the rules be adopted without any changes. The Commission adopted the rules without any changes and the statement of procedure at the July 14, 1998 open meeting. Specifically, under the statement of procedure, the Commission has agreed to the following: (i) with respect to applications for securities offerings that are registered with the SEC, the administrative completeness review time-frame shall be 30 days, and the substantive review time-frame, when no hearing is requested, shall be 30 days; (ii) with respect to applications for the registration renewal of securities offerings, the administrative completeness review time-frame shall be 15 days, and the substantive review time-frame, when no hearing is requested, shall be 15 days; and (iii) with respect to applications for securities salesmen with clean disciplinary histories who are transferring firms, the administrative completeness review time-frame shall be 15 days from the date that the Division receives the Form U-5 from the salesman's former firm, and the substantive review time-frame, when no hearing is requested, shall be 15 days.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.
12. Incorporations by reference and their location in the text:
None.
13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:
Not applicable.
14. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Sections

R14-4-146. Processing of Initial and Renewal Applications for the Registration or Exemption of Securities Offerings

R14-4-147. Processing of Applications for Dealer and Salesman Registration

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-146. Processing of Initial and Renewal Applications for the Registration or Exemption of Securities Offerings

- A. For purposes of this Section, the term "application" includes all documents, information and fees prescribed by the Commission for the registration or exemption of securities under A.R.S., Title 44, Chapter 12, and any rules promulgated under those statutes.
- B. Within 30 days after receipt of an initial or renewal application for the registration or exemption of securities, the Commission shall notify the applicant, in writing, that the application is complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 30 days after receipt by the Commission of information in satisfaction of all deficiencies.
- C. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.
- D. Within 60 days after receipt of a complete application, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
 1. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
 2. If the applicant requests a hearing, the applicant shall do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.
- E. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:

1. When the Commission approves an application under subsection (D):
 - a. Administrative completeness review time-frame: 60 days;
 - b. Substantive review time-frame: 60 days;
 - c. Overall time-frame: 120 days.
2. When the Commission initiates the denial process and no hearing is requested under subsection (D)(1):
 - a. Administrative completeness review time-frame: 60 days;
 - b. Substantive review time-frame: 130 days;
 - c. Overall time-frame: 190 days.
3. When the Commission initiates the denial process and a hearing is requested under subsection (D)(2):
 - a. Administrative completeness review time-frame: 60 days;
 - b. Substantive review time-frame: 280 days;
 - c. Overall time-frame: 340 days.
- F. If an applicant requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request for the duration of the extension or continuance.
- G. When the period of time prescribed in this Section is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When the period of time prescribed for a specific time-frame is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.
- H. In lieu of the time-frames established by this Section, the Commission shall process applications for the registration or exemption of certain securities offerings within the time-frames set forth in Table A.

R14-4-147. Processing of Applications for Dealer and Salesman Registration

- A. For purposes of this Section, the term "application" includes all documents, information and fees prescribed by the Commission under A.R.S., Title 44, Chapter 12, Articles 5 and 9 and any rules promulgated under those statutes.
- B. The Commission shall provide notices of deficiency, completeness or approval, as required under this Section, either in writing or through the CRD system.
- C. The following provisions apply to applications for dealer registration:
 1. Within 21 days after receipt of an application for dealer registration, the Commission shall notify the applicant that the application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 21 days after

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- receipt by the Commission of information in satisfaction of all deficiencies.
2. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.
 3. Within 60 days after receipt by the Commission of a complete application and the approval of the application by both the National Association of Securities Dealers and the state of the dealer's principal place of business if other than Arizona, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
 - a. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
 - b. If the applicant requests a hearing, the applicant shall do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.
 4. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
 - a. When the Commission approves an application under subsection (C)(3):
 - i. Administrative completeness review time-frame: 42 days;
 - ii. Substantive review time-frame: 60 days;
 - iii. Overall time-frame: 102 days.
 - b. When the Commission initiates the denial process and no hearing is requested under subsection (C)(3)(a):
 - i. Administrative completeness review time-frame: 42 days;
 - ii. Substantive review time-frame: 130 days;
 - iii. Overall time-frame: 172 days.
 - c. When the Commission initiates the denial process and a hearing is requested under subsection (C)(3)(b):
 - i. Administrative completeness review time-frame: 42 days;
 - ii. Substantive review time-frame: 280 days;
 - iii. Overall time-frame: 322 days.
- D. The following provisions apply to applications for salesman registration:**
1. Within 30 days after receipt of an application for salesman registration, the Commission shall notify the applicant that the application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 30 days after receipt by the Commission of information in satisfaction of all deficiencies.
 2. An application will not be deemed complete until the Commission receives notice through the CRD system, or otherwise, that the applicant:
 - a. Has passed all of the required examinations;
 - b. Is not seeking dual registration; and
 - c. Is not under special review status by the National Association of Securities Dealers.
3. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-1861(K). If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-1861(K). An applicant whose application has been abandoned may reapply by submitting a new application.
 4. Within 60 days after receipt of a complete application, and the approval of the application by both the National Association of Securities Dealers and the state of the salesman's principal place of business if other than Arizona, the Commission shall approve the application or initiate the denial process by filing a notice of an opportunity for a hearing under R14-4-306. When a notice of an opportunity for a hearing is filed:
 - a. If the applicant does not request a hearing, the Commission shall approve, deny or take other appropriate action regarding the application within 70 days after service of the notice.
 - b. If the applicant requests a hearing, the applicant shall do so within 10 days after receipt of the notice. The Commission shall approve, deny or take other appropriate action regarding the application within 210 days after the applicant's request is docketed with the Commission.
 5. For purposes of A.R.S. § 41-1073, the Commission has established the following time-frames:
 - a. When the Commission approves an application under subsection (D)(4):
 - i. Administrative completeness review time-frame: 60 days;
 - ii. Substantive review time-frame: 60 days;
 - iii. Overall time-frame: 120 days.
 - b. When the Commission initiates the denial process and no hearing is requested under subsection (D)(4)(a):
 - i. Administrative completeness review time-frame: 60 days;
 - ii. Substantive review time-frame: 130 days;
 - iii. Overall time-frame: 190 days.
 - c. When the Commission initiates the denial process and a hearing is requested under subsection (D)(4)(b):
 - i. Administrative completeness review time-frame: 60 days;
 - ii. Substantive review time-frame: 280 days;
 - iii. Overall time-frame: 340 days.
- E. If an applicant under this Section requests, and is granted, an extension or continuance, the appropriate time-frames shall be tolled from the date of the request for the duration of the extension or continuance.**
- F. When the period of time prescribed in this Section is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When the period of time prescribed for a specific time-frame is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.**
- G. The Commission shall renew registrations under this Section upon receipt by the Commission of the registration fee, as required by A.R.S. § 44-1861.**

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Table A. Arizona Corporation Commission Securities Division - Time-Frames

ARIZONA CORPORATION COMMISSION SECURITIES DIVISION - Time-frames

<u>Security Offering</u>	<u>Statutory or Administrative Code Reference</u>	<u>Administrative Completeness Review (in days)</u>	<u>Substantive Review (in days)</u>	<u>Overall Time-Frame (in days)</u>
<u>Nonexempt government securities</u>	<u>A.R.S. § 44-1843.01</u>	<u>10</u>	<u>10</u>	<u>20</u>
<u>Exempt transactions -- existing stockholders and/or employees</u>	<u>A.A.C. R14-4-101</u>	<u>5</u>	<u>5</u>	<u>10</u>
<u>Exempt transactions -- restricted public offerings</u>	<u>A.A.C. R14-4-102</u>	<u>5</u>	<u>5</u>	<u>10</u>

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

**CHAPTER 6. CORPORATION COMMISSION
INVESTMENT MANAGEMENT**

PREAMBLE

1. **Sections Affected**
R14-6-105
- Rulemaking Action**
New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 Authorizing statute: A.R.S. § 44-3131
 Implementing statute: A.R.S. §§ 41-1072 through 41-1078
 Constitutional authority: Arizona Constitution Article XV §§ 4, 6 and 13
3. **The effective date for the rules (if different from the date the rules are filed with the Office):**
September 17, 1998.
4. **A list of all previous notices appearing in the Register addressing the final rule:**
 Notice of docket opening: 3 A.A.R. 2485, September 5, 1997
 Notice of proposed rulemaking: 4 A.A.R. 997, May 1, 1998
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
 Name: Brian J. Schulman, General Counsel
 Address: Arizona Corporation Commission, Securities Division
 1300 W. Washington, 3rd Floor
 Phoenix, Arizona 85007
 Phone: (602) 542-4242
 Fax: (602) 594-7406
6. **An explanation of the rule, including the agency's reasons for initiating the rules:**
 Rule R14-6-105 ("Rule 105") establishes time-frames within which the Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") shall process the applications for investment adviser and investment adviser representative licensure. Rule 105 is mandated by A.R.S. § 41-1072, *et seq.* (the "time-frame statutes"), which require any state agency that issues licenses to promulgate final rules establishing the time-frames during which the agency will either grant or deny each type of license that the agency issues.

Rule 105's time-frames incorporate certain categories of time-frames created by the time-frame statutes. Under the time-frame statutes, each agency shall establish an "overall time-frame," which consists of 2 components: (i) an "administrative completeness review time-frame"; and (ii) a "substantive review time-frame." The time-frame statutes define the administrative completeness review time-frame to mean the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by law. The time-frame statutes define the substantive review time-frame as the number of days after the completion of the administrative completeness review time-frame during which an

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agency determines whether an application meets all substantive criteria required by law. Rule 105 establishes separate time-frames for each of these components.

Rule 105 contemplates 3 potential processing tracks, each with its own time-frames. All 3 tracks share an administrative completeness review time-frame of 42 days. The Commission then has 60 days after receipt of the completed application to approve the application or initiate the denial process by filing a notice of an opportunity for hearing. If the Commission approves the application, the process effectively is over. If the Commission initiates the denial process by filing a notice of an opportunity for hearing, the applicant has 10 days to file a hearing request. If the applicant does not request a hearing, then the Commission shall approve or deny the application within 70 days. If the applicant requests a hearing, then the Commission shall approve or deny the application within 210 days. The latter time-frame contemplates time for the following: (i) an administrative hearing; (ii) a recommended order from the hearing officer; and (iii) a final order from the Commission. In sum, there are 3 overall time-frames. Where the Commission approves the application, the overall time-frame is 102 days. Where the Commission recommends a denial of the application and no hearing is requested, the overall time-frame is 172 days. Where the Commission recommends a denial of the application and a hearing is requested, the overall time-frame is 322 days.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
8. **The summary of the economic, small business and consumer impact:**
This economic, small business and consumer impact statement for the rule analyzes the costs, savings, and benefits that accrue to the Commission, Secretary of State, registrants, and the public. With the adoption of the proposed rule, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The benefits to the Commission are minimal. The estimated additional cost to the Secretary of State's office is minimal. This additional cost stems from the Secretary of State's staff time publishing the rule. The benefits provided by Rule 105 are non-quantifiable. The rule should benefit the Commission's relations with the regulated public by preventing misunderstandings about the time necessary for licensure. The public will benefit from clear and concise standards for the licensure process.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rule:**
The Commission made certain technical and grammatical changes to the rule in response to a May 1, 1998 memorandum from the Office of the Secretary of State. There were no substantive changes made.
10. **A summary of the principal comments and the agency response to them:**
The Commission accepted oral comments at the public comment hearing from 2 members of the local securities bar. The commentators did not object to the rule. The Commission received a written comment that merely referenced Rule 105 in its discussion of 2 other related time-frames; it did not include any substantive remarks concerning Rule 105.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None.
12. **Incorporations by reference and their location in the text:**
None.
13. **Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:**
Not applicable.
14. **The full text of the rules follows:**

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 6. CORPORATION COMMISSION – INVESTMENT MANAGEMENT

**ARTICLE 1. GENERAL PROVISIONS RELATING TO
THE ARIZONA INVESTMENT MANAGEMENT ACT**

Section

**R14-6-105. Processing of Applications for Investment Adviser
and Investment Adviser Representative Licensure**

**ARTICLE 1. GENERAL PROVISIONS RELATING TO
THE ARIZONA INVESTMENT MANAGEMENT ACT**

**R14-6-105. Processing of Applications for Investment
Adviser and Investment Adviser Representative Licensure**

- A. For purposes of this Section, the term "application" includes all documents, information and fees prescribed by the Commission under A.R.S. Title 44, Chapter 13, Articles 4 and 5 and the rules promulgated under those statutes.**

- B. Within 21 days after receipt of an application for investment adviser or investment adviser representative licensure, the Commission shall notify the applicant, in writing, that the application is either complete or deficient. If the application is deficient, the notice shall specify all deficiencies. Unless otherwise notified by the Commission, an application will be deemed complete 21 days after receipt by the Commission of information in satisfaction of all deficiencies.**
- C. An applicant with a deficient application shall supply the information in satisfaction of the deficiencies within the time permitted by A.R.S. § 44-3181. If the applicant fails to provide the information, the Commission may abandon the application under A.R.S. § 44-3181. An applicant whose application has been abandoned may reapply by submitting a new application.**

- ## NOTICE OF FINAL RULEMAKING

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

1. Sections Affected

Rulemaking Action

[illegible]

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R20-5-730	New Section
R20-5-731	New Section
R20-5-732	New Section
R20-5-733	New Section
R20-5-734	New Section
R20-5-735	New Section
R20-5-736	New Section
R20-5-737	New Section
R20-5-738	New Section
R20-5-739	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing Statute: A.R.S. § 23-961.01

Implementing Statute: A.R.S. § § 23-961 and 23-961.01

3. Effective date of the rules:

September 9, 1998

4. A list of previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 4 A.A.R. 795, March 27, 1998

Notice of Proposed Rulemaking: 4 A.A.R. 911, April 17, 1998

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Laura L. McGrory, Legal Division

Address: Industrial Commission of Arizona
800 West Washington
Phoenix Arizona 85007

Telephone: (602) 542-5740

Fax: (602) 542-6783

6. An explanation of the rule, including the agency's reason for initiating the rule:

In 1997, the Arizona Legislature enacted A.R.S. § 23-961.01 which permits 2 or more employers, who meet the criteria of § 23-961.01, to form workers' compensation pools. Workers' compensation pools organized under § 23-961.01 may apply to the Industrial Commission of Arizona for authority to self-insure for workers' compensation. Section G of A.R.S. § 23-961.01 specifically directs the Industrial Commission to promulgate rules to safeguard the solvency of pools organized under § 23-961.01 and to guarantee that injured workers receive benefits as required under the Arizona Workers' Compensation Act. The Legislature mandated that the rules include matters pertaining to classification and rating, loss reserves, investments, financial security, minimum and combined premiums, combined net worth, specific and aggregate excess insurance, pool homogeneity, and assessments necessary for participation in and administration of the workers' compensation system.

In response to A.R.S. § 23-961.01, the Industrial Commission adopted Article 7 to 20 A.A.C. 5. Article 7 includes new Sections addressing each of the matters specifically listed in A.R.S. § 23-961.01 which Sections are for the purpose of safeguarding the solvency of the pools and guaranteeing that injured workers receive benefits as required under the Arizona Workers' Compensation Act.

7. A showing of good cause why the rule is necessary to promote statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The proposed rule changes do not diminish a previous grant of authority of a political subdivision of this state.

8. The summary of the economic, small business, and consumer impact statement:

Employers that meet the requirements of A.R.S. § 23-961.01 and Article 7 and that wish to join a workers' compensation pool for purposes of providing workers' compensation insurance coverage to employees will be directly affected by and receive direct benefits from the adopted rules. Employee associations or organizations that form a workers' compensation pool will be directly affected by, bear the costs of, and receive direct benefits from the adopted rules.

Workers' compensation insurance carriers may be indirectly affected by Article 7 because employers may substitute coverage provided by a workers' compensation insurance carrier for coverage provided by a workers' compensation pool. The result is less premiums collected by the workers' compensation insurance carrier.

Other parties indirectly affected include 3rd-party claims processors and administrators who will benefit from contracts established with pools to process claims and administer the operation of the pools.

The Industrial Commission may incur costs associated with this rulemaking because the Industrial Commission anticipates an increase in workload that will need to be handled by adding additional staff (e.g. the processing of new applications for pools and renewal applications of existing pools). The Industrial Commission also anticipates that it will need additional staff to assist the pools to develop and implement loss control programs. The Industrial Commission benefits from hiring additional staff to

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work with pools to develop loss control programs. An active and effective loss control program leads to fewer workers' compensation injuries. Fewer injuries result in greater employee productivity and decreased costs for workers' compensation expenses. This, in turn, leads to decreased premiums paid by employers. At this point in time, however, funding has not been authorized for these positions.

The Industrial Commission also benefits from the rules because the rules are written to ensure financial solvency of a pool. Protecting the solvency of a pool translates to protecting the assets of the Special Fund, which is a fund administered by the Industrial Commission. If a pool is unable to process or pay workers' compensation claims, ultimately money from the Special Fund would be used to pay the benefits (to the extent the bonds, securities, and assets of a pool do not cover the liability of the pool).

The Industrial Commission also benefits from the rules because the rules provide specific time-frames and criteria for the processing of initial and renewal applications. This specificity will enable the Commission to process applications more efficiently.

The Special Fund of the Industrial Commission is funded through a tax on workers' compensation premiums. The Industrial Commission does not anticipate that state revenue generated by this tax will decrease or increase by the enactment of Article 7. Regardless of whether an employer is insured through a workers' compensation insurance carrier or is self-insured, premium taxes are required to be paid.

While it is difficult to state whether the impact is a result of the enabling statute or the addition of Article 7, the State Compensation Fund (SCF), a quasi-state agency, may be affected by the enactment Article 7 because SCF is a workers' compensation insurance carrier that may experience a decrease in revenue caused by the loss of premiums dollars. This loss would be caused by employers choosing to join a pool rather than insuring with SCF. On the other hand, SCF may generate revenue if it markets itself as an entity (3rd-party service company) that can process workers' compensation claims on behalf of a workers' compensation pool.

Employers will experience minimal to no cost impact as a result of the rules adopted in Article 7. An employer must pay a premium to a workers' compensation pool. The premium paid by an employer enables a pool to pay workers' compensation losses and administrative costs of the pool. If, however, the employer did not pay a premium to a workers' compensation pool, the employer would be required to pay a premium to a workers' compensation insurance carrier [see A.R.S. § 23-961(A)]. Therefore, the payment of a premium to a workers' compensation pool does not constitute an additional cost to an employer. Further, depending on market forces, an employer may save money by belonging to a pool. In the 1st year of operation for a pool, premiums paid to a pool could be between 5-9% below premiums charged by carriers and up to 12% below carrier premiums in future years. On the other hand, workers' compensation insurance carriers may respond to A.R.S. § 23-961.01 by offering competitive premiums. The result is that employers may find it more cost efficient to remain insured with a traditional insurance carrier instead of joining a pool. Either scenario, the Industrial Commission does not believe that employers will incur additional costs associated with the adoption of Article 7.

An employer association that elects to form a workers' compensation pool will incur costs. Direct administrative costs to a pool will include the cost of administration (including claims processing services, loss control services and underwriting services of a pool), specific excess insurance with \$250,000 self-insured retention, aggregate excess insurance with a \$5 million or 110% of premiums self-insured retention, fidelity insurance, guaranty bond, audit of financial statements, actuarial reviews, and payment of premium taxes. In general, the Industrial Commission anticipates that the administrative costs listed will account for 25% of the total costs incurred by a pool. The costs to obtain the items listed is outweighed by the associated benefits. In general, the items listed ensure that a pool has the ability to process and pay workers' compensation benefits to injured workers and serve to protect the solvency of the pool as well as the solvency of the Special Fund (fund that is statutorily responsible to pay claims of a pool that is unable to process and pay claims).

The remaining costs incurred by a pool include the direct expenses paid and medical and compensation benefits paid to injured workers. The costs incurred for workers' compensation benefits is not a cost that is the result of the enactment of Article 7. The obligation to pay workers' compensation benefits arises under A.R.S. § 23-961.01 and A.R.S. § 23-901 *et seq.*

All costs incurred by a pool are covered by the premiums charged to members of the pool. In this regard, the costs incurred by a pool represent indirect costs to members of the pool. As previously noted, however, employers are required by law to obtain workers' compensation insurance. Therefore, premiums paid to a pool are not additional costs incurred by an employer.

Small businesses that wish to join workers' compensation pools may be affected by these rules. As with other employers, the costs to a small business will be minimal to none. Small business may, in fact, benefit to a greater degree than other businesses for the reason that small businesses traditionally lack the bargaining power of larger business. As a consequence, small businesses may pay higher premiums to traditional insurance carriers. Workers' compensation pools organized under A.R.S. § 23-961.01 offer small businesses a choice. By joining a pool, a small business has the opportunity to save money. On the other hand, traditional insurance carriers may offer better premiums to small businesses to attract and keep the insurance business.

A workers' compensation pool does not meet the definition of "small business" for the reason that a pool is not independently owned and operated. As to members of a pool which can include small businesses, A.R.S. § 23-961(A) requires that every employer be insured for workers' compensation insurance. Therefore, because an employer is required to obtain workers' compensation coverage for its employees, the adopted rules cannot provide a less costly compliance requirement.

The Industrial Commission does not anticipate a negative impact on private persons or consumers as a result of the adopted rules. The Industrial Commission believes, however, that workers whose employers are members of a workers' compensation pool will benefit from the adopted rules if the pool implements an effective and active loss control program. An active and

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effective loss control program results in improved work place safety. Improved work place safety means that work place injuries will decline. The Industrial Commission also believes that consumers may benefit from the adopted rules for the same reason. A decline in work place injuries means lower premiums charged to a business. Lower premium costs incurred by a business may mean savings to consumers of the business.

The purpose of adopting Article 7 is to develop a process by which employer associations or organizations may form workers' compensation pools for the purpose of providing workers' compensation insurance coverage to member employers. As part of this process, and in recognition of the mandate of A.R.S. § 23-961.01, the Industrial Commission adopted rules to ensure the solvency of the pools and ensure that pools process and pay workers' compensation benefits as required under the Workers' Compensation Act. In adopting these rules, the Industrial Commission also intended to protect the assets of the Special Fund. In light of the foregoing purposes, the Industrial Commission does not believe that there are less intrusive or less costly alternative methods of achieving the purposes of the rulemaking.

9. A description of the changes between the proposed rule, including supplemental notices, and final rules:

The Industrial Commission ("ICA") made the following changes to the proposed rules. Language that has been added after the proposed rules were published are indicated by bold underlined text. Language that has been stricken from the proposed rules are indicated by bold strike outs. The ICA's reason for the change is indicated in italics.

R20-5-701. Definitions

~~A.~~ In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Cash flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds received from operations of a business by current liabilities.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes 3 years of loss information.

... ~~"NCCI" means the National Council on Compensation Insurance.~~

The ICA deleted the reference to (A) because there is no subsection (B) in Section 701. Therefore, the first subsection is an implied subsection (A) that does not need to be labeled. Additionally, in response to a comments from GRRC staff the ICA added the words "of a business" to the definition of "cash flow ratio" and "which includes" to the definition of "experience modification rate" to improve the clarity of the definitions. The ICA also deleted the reference to the National Council on Compensation Insurance because Article 7 does not refer to the NCCI.

R20-5-703. Forms Prescribed by the Commission

The following forms are available upon request from the Commission and contain requests for the information listed in each subsection.

1. Initial Application for Authority to Self-Insure:

...f. Name and address of the industry; or trade association, or professional organization to which members of the pool belong;

g. Effective date of formation of the industry; or trade association, or professional organization to which members of the pool belong;

5. Self-Insured Payroll Report:

a. Description of the cumulative payroll for all members of the pool (classification codes, methods and types of pay);

7. Self-Insured Injury Report:

a. Description of specific information for the current year and 3 preceding years for each injury requiring payment in excess of \$5000 which includes accumulated amount paid and reserved ~~for or~~ each claim in excess of \$5,000;

b. Description of all combined injuries for the current year and 3 preceding years if individual injury required payment of less than \$5,000;

8. Quarterly Tax Payment Form:

...d. Description and calculation of any ~~the~~ penalty due;

9. Application to Add a Member ~~Members~~ to Self-insured Pool:

a. Name of the pool and name of the each member to be added to the pool, including if applicable, addresses, corporation, subsidiary, partnership, and trust information;

b. Nature and years in business of the member members to be added;

c. History of business in Arizona and elsewhere for the each member to be added;

...i. Workers' compensation claims, loss and performance history for the each member to be added;

...j. Authorization by board resolution approving addition of each new member;

11. Notice of Termination of Membership:

a. Name and address of the pool: Pool identification:

In response to a comments received from GRRC staff, the ICA added the words "or" or "association" to improve the clarity of R20-5-703(1) and added language to R20-5-703(5) to clarify that the payroll requested is for the members collectively. For each form listed in R20-5-703, and in response to comments received from GRRC staff, the ICA added language clarifying the "date of execution" and "authorized signature". The ICA added the words "for" and "all" in R20-5-703(7) to correct a typographical error and to improve the clarity of the rule. Additionally, and in response to comments received from GRRC staff, the ICA changed the word "the" to "any" in R20-5-703(8) to clarify that a penalty may be due and made changes in R20-5-703(9) and R20-5-703(11) to improve the clarity of the rules.

R20-5-704. Requirement for Commission Approval to Act as Self-Insurer

~~A No~~ pool ~~does not have~~ has authority to act as a self-insurer under A.R.S. § 23-961 and 23-961.01 unless the pool receives and maintains a certificate of authority from the Commission.

The ICA made these changes in response to comments from GRRC staff.

R20-5-705. Duration of Certificate of Authority Approval

Except as provided in this subsection, a certificate of authority approval is valid for 1 fiscal year. The Commission may renew the certificate on an annual basis upon application by a pool. If a pool timely files a ~~timely and~~ complete renewal application under this Article, the Commission shall consider the existing certificate of authority valid, subject to compliance with A.R.S. § 23-901 ~~et seq.~~ and this Article, until a new certificate of authority is issued or an order of the Commission denying a renewal application refusing to renew becomes final.

The ICA made these changes in response to comments received from GRRC staff.

R20-5-706. Time-frames for Processing Initial and Renewal Application for Authority to Self-Insure

A. Administrative completeness review.

1. Initial application. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform an applicant by written notice whether the application is ~~deemed~~ complete or is deficient within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient.

2. Renewal application. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform a pool by written notice whether the application is ~~deemed~~ complete or is deficient within the time-frame provided in this subsection. If the renewal application is incomplete, the Division shall include in its written notice to the pool a complete list of the missing information. The Division shall deem the application withdrawn if a pool fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient, except that failure to file the financial and actuarial reports required under R20-5-708(C) shall not cause the Division to deem the application withdrawn if a pool files the financial and actuarial reports with the Division within 120 days after the end of the pool's fiscal year.

In response to comments received from GRRC staff, the ICA added language clarifying that the Division shall provide an applicant or pool a list of information missing from an application or renewal application.

R20-5-707. Filing Requirements for Initial Application for Self-Insurance License

... B. The Commission shall deem an initial application for authority to self-insure complete if an applicant provides the following information with the initial application:

...6. ~~A resolution~~ Resolution from the board approving employers for membership in the pool;

7. A certified copy of an audited financial statement or an internally reviewed and signed financial statement for each employer applying for membership in the pool member for the most current and prior ~~2 two~~ years that, considered collectively, demonstrate that the combined net worth of the employers applying for membership in the pool members at the time of the initial application is not less than \$1,000,000;

8. ~~A copy of Preparation of~~ the following financial ratios for each employer applying for membership in the pool of each member:

The ICA made these changes in response to comments from the Secretary of State and GRRC staff and to improve the clarity of the rules.

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...11. An original Original, signed fidelity policy, or a certified copy, that meets the requirements of R20-5-712 or written confirmation from an authorized insurance company that it will provide fidelity coverage to the applicant as required under R20-5-712 which coverage shall become effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;

12. An original Original, signed guaranty bond, securities, or letter of credit that meets the requirements of R20-5-713 or any of the following:

a. Written confirmation from an authorized insurance company that it will provide a guaranty bond to the applicant as required under R20-5-713 which bond shall be deposited with the Industrial Commission before approval for self-insurance becomes effective,

b. Written confirmation from a financial institution that it will provide a letter of credit to the applicant as required under R20-5-713 which letter of credit shall become effective when approval for self-insurance becomes effective, or

c. Written confirmation from a pool that it will obtain securities as required under R20-5-713 which securities shall be deposited with the Arizona State Treasurer before approval for self-insurance becomes effective.

...14. A copy Copy of excess insurance policies issued by an authorized carrier that ~~meet-meets~~ the requirements of R20-5-715 or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the applicant as required under R20-5-715. The excess coverage shall be effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;

The ICA made these changes in response to a comment that an applicant should not be required to purchase excess insurance coverage before approval is obtained from the ICA on an application to self-insure. The ICA agrees and added language that gives an applicant a choice regarding the timing of the purchase of the items listed above. Other grammatical changes were made in response to comments from GRRC staff.

16. A designation Designation of a service company and a copy of the signed agreement between the service company and pool that ~~meet-meets~~ the requirements of R20-5-725 or a written statement with supporting documentation required under R20-5-726 from the pool requesting authorization to process claims in-house ~~with supporting documentation required under R20-5-726;~~

The ICA made these changes in response to comments received from GRRC staff.

20. A feasibility Feasibility study by a member of the American Academy of Actuaries (~~MAAA~~) (~~MAA~~) or a Fellow of the Casualty Actuarial Society (FCAS) that documents ~~on a pro-forma basis~~ the rate structure needed to set premium levels to cover potential losses and expenses of the pool; and

The ICA made these changes in response to comments received from GRRC staff.

21. A schedule showing ~~for each member~~ net workers' compensation premiums paid, total losses incurred, and experience modification rates for the 3 preceding years for each employer applying for membership in the pool.

The ICA made this change in response to comments received from GRRC staff.

Throughout Section 707 other minor grammatical changes were made to ensure uniformity in the style of writing and to improve the clarity of the rule.

R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License

A. A self-insured pool seeking renewal of an authority to self-insure for ~~workers' worker~~ compensation insurance shall file a renewal application 30 days before the existing certificate of authority expires. A pool shall maintain all bonds, policies, and contracts required under this Article while a renewal application decision is pending before from the Commission ~~on a renewal application~~. The Commission shall deem a renewal application withdrawn if a pool fails to maintain all bonds, policies, and contracts required under this Article.

The ICA made these changes in response to comments received from GRRC staff.

...C. A self-insured pool shall provide the following information at the time the pool files a renewal application:

...3. A confirmation Confirmation of an excess insurance policies issued by ~~an a~~ authorized carrier that ~~meet-meets~~ the requirements of R20-5-715;

4. A copy Copy of a signed service contract that meets the requirements of R20-5-725 designating an approved service company or a written statement with supporting documentation required under R20-5-726 from the pool requesting authorization to process claims in-house in-house that meets the requirements of R20-5-726;

7. A statement of any change in the calculation method of a premium for to each member;

8. A statement describing the ~~administrative~~ expenses paid from the trustee fund and the loss fund and losses expressed in a dollar amount and as a percentage of the total premiums collected written by the pool in the preceding fiscal year;

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The ICA made these changes in response to comments received from GRRC staff. other minor grammatical changes were made to R20-5-708(C) to improve the clarity of the rule.

...D. No later than 120 days after the end of a pool's fiscal year, the a pool shall file with the Division a copy of the pool's most recent audited annual financial statements statement and a copy of the pool's most recent actuarial review of:

- 1) losses and , reserves, and incurred but not reported claims, for all known claims, and
- 2) reserves for incurred but not reported claims.

The ICA made this change to clarify that a financial statement and actuarial review is required for losses and reserves of known claims and reserves for incurred but not reported claims.

...F. If a A pool does not that fails to file a renewal application, each member of the pool shall provide the Commission proof of compliance with A.R.S. § 23-961(A) workers' compensation coverage for each of its members by an insurance carrier authorized by the Arizona Department of Insurance to write workers' compensation insurance in Arizona no later than 10 days after the pool's certificate of authority expires.

G. If a pool's renewal application is deemed withdrawn under this Section, each member of the pool A pool that has filed a renewal application that the Commission has deemed withdrawn shall provide proof of compliance with A.R.S. § 23-961(A) workers' compensation coverage for each of its members by an insurance carrier authorized by the Arizona Department of Insurance to write workers' compensation insurance in Arizona no later than 10 days after the date the Commission deems the application withdrawn.

The ICA made the changes in subsections (F) and (G) to clarify that a member employer has the right to obtain workers' compensation coverage by any of the methods provided in A.R.S. § 23-961(A). Further, an employer has the obligation to ensure that it is in compliance with A.R.S. § 23-961(A) and notify the Industrial Commission of this fact.

R20-5-709. Combined Net Worth

A pool shall ensure that the combined net worth of its members is at least \$1 million ~~dollars~~ at the time the pool files an initial application for authority to self-insure.

The ICA made this change in response to comment from the Secretary of State.

R20-5-710. Similar Industry Requirement

The Commission shall consider the following in determining whether ~~2 two~~ or more employers meet the similar industry requirement of A.R.S. § 23-961.01:

The ICA made this change in response to a suggestion from the Secretary of State.

In R20-5-711 (Joint and Several Liability of Members) the ICA changed the word "industrial" to "workers' compensation claims", deleted the word "understand" from subsection (D) and made other minor grammatical changes in response to comments received from GRRC staff.

R20-5-712. Fidelity Policy

A. A pool shall obtain and maintain during all periods of self-insurance a fidelity policy to protect the pool from unlawful actions of the following:

1. Individuals appointed to the pool's board of trustees (individual and collective liability), ~~individually and collectively,~~
- B. The amount of the fidelity policy ~~described~~ in subsection (A) shall be at least \$1 million ~~dollars~~. A pool may purchase a fidelity policy in excess of \$1 million if the pool determines that a policy in excess of \$1 million is necessary and sufficient to protect members of the pool from damages resulting from misrepresentation or misuse of any moneys or securities owned, controlled, or managed by the board, administrator or employees of the pool.

The ICA made these changes in response to comments received from GRRC staff and the Secretary of State.

R20-5-713. Guaranty Bond

C. A guaranty bond or continuation certificate for the ~~guaranty guarantee~~ bond filed with the Commission shall bear the effective date of the certificate of authority under which the pool is authorized to ~~self-insure~~. The guaranty bond or continuation certificate act self-insured and shall be valid for a period of 1 year, subject to annual renewal ~~that shall be~~ in the amount established in the option election form filed with a renewal application.

The ICA made these changes in response to comments received from GRRC staff. The ICA made other minor grammatical changes in Section 713 in response to comments from GRRC staff.

R20-5-715. Aggregate and Specific Excess Insurance Policies

C. ~~A pool or insurance company person~~ seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the

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Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.

D. Policy and Retention Amounts.

1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:

a. Maximum retention for specific excess ~~insurance~~ ~~instance~~ shall not exceed \$250,000. Specific excess insurance shall be provided to ~~the its~~ statutory limit;

The ICA made these changes to correct a typographical error and to improve the clarity of the rules.

R20-5-716. Rates and Code Classifications; Penalty Rate

A. A pool shall only use rates and code classifications obtained from a rating organization licensed ~~approved~~ by the Arizona Department of Insurance.

The ICA made this change to reflect that the Arizona Department of Insurance "licenses", not "approves" rating organizations.

R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds

A. The gross annual workers' compensation premium for a pool shall be sufficient to fund the administrative expenses and total incurred losses ~~loss fund~~ of the pool.

B. A pool shall calculate a member's workers' compensation premium and experience modification rate using formulas described in a rating plan that meets the following:

1. The rating plan is filed with the Arizona Department of Insurance by an Arizona licensed rating organization, and
2. The rating plan has not been disapproved by the Arizona Department of Insurance.

for a member based upon formulas determined by a rating organization approved by the Arizona Department of Insurance for calculation of premiums and experience modification rates by a worker compensation insurance carrier.

To improve the clarity and consistency of Section 717(A), the ICA added language identifying the monies within the loss fund that are funded by the gross annual workers' compensation premiums. In response to a comment that demonstrated some confusion about the calculation of rates and premiums, the ICA added language to Section 717(B) to clarify how a pool is required to calculate rates and premiums for members of the pool.

...D. Deviations from rates.

1. A pool shall not deviate from established workers' compensation rates unless the pool complies with the following:

- a. The deviation is based upon the expense and loss experience of the pool;[‡]
- b. The deviation is supported and justified by an actuary's feasibility study;[‡] and
- c. The pool provides the information required under this subsection to the Division and receives approval from the Division.

...E. Refunds. ~~A pool may declare a refund of surplus money, including excess investment income, to its members under the following conditions:~~

1. a. ~~Surplus~~ ~~There exists surplus money exists, including excess investment money, for a fiscal year in excess of the amount necessary to meet all financial obligations for the fiscal year, including financial obligations arising from incurred but not reported claims;~~
2. b. ~~Total assets of a pool are greater than total liabilities for each fiscal year;~~
3. c. ~~An actuary approves has approved the amount of the refund;~~
4. d. ~~The amount of refund is a fixed liability of the pool at the time the refund is declared; and~~
5. e. ~~The board sets a date for the refund that shall not be less than 12 months after the end of the fiscal year in which the excess is was reported.~~

The ICA changed the semicolons to colons and eliminated the reference to (1) in subsection (E) in response to a comments received from the Secretary of State. Other minor grammatical changes were made in response to comments received from GRRC staff.

R20-5-718. Financial Statements

C. A pool shall ensure that an actuarial opinion is rendered by an actuary who ~~that~~ is a member of the Academy of Actuaries (MAAA) (~~MAA~~) or a fellow of the Casualty Actuarial Society (FCAS).

D. A pool shall ensure that the pool's annual financial statement described in subsection (A) is audited by a certified public accountant. ~~The~~ which audit shall include:

The ICA made changes in subsection(C) in response to comments received from GRRC staff. The ICA placed parenthesis around the letter A in response to a comment from the Secretary of State. The word "which" was changed to "The" to make the sentence more clear.

R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool

A. An employer that meets the requirements of A.R.S. § 23-961.01 and this Article that seeks to join an existing pool shall submit an application for membership to the board of trustees of the pool, or ~~the board's its~~ designee, on a form approved by the Commission.

B. Consideration of application by a board.

1. A board shall approve or deny admission in the pool according to the bylaws of the pool and other applicable statutes and rules.

C. Commission Approval.

3. The Commission shall issue written findings and an order either approving or denying admission of an employer into a pool under subsection (C)(1) or approving or denying authorization to add members without Commission approval under subsection (C)(2). The Commission shall ~~mail serve~~ the findings and order upon the interested parties. The written findings and order is final unless a party files a request for hearing with the Administration Division within 10 days after the findings and order is issued. Hearing rights and procedure are governed by R20-5-736, R20-5-737 and R20-5-738.

D. Admission of an employer under subsection (C)(2).

1. A pool shall require an employer applying for membership in the pool to provide a financial report that is either a certified audited financial statement or an internally reviewed and signed financial statement certified by an officer or representative of the ~~employer business~~ applying for membership.

3. In addition to the notice required under subsection (D)(2), the pool shall also provide to the Commission, the board resolution approving membership and a copy of the employer's application for admission into the pool.

The ICA made these changes in response to comments received from GRRC staff.

R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting

A. A member of a pool may terminate its participation in the pool or submit to cancellation by a pool under the bylaws of the pool and other applicable statutes and rules.

B. A pool shall provide the Commission written notice of a member's intent to terminate ~~membership~~ or a pool's intent to cancel a member's participation in the pool at least 30 days before the termination or cancellation ~~is effective takes place~~ on a form approved by the Commission.

The ICA made these changes in response to comments received from GRRC staff.

R20-5-723. Trustee Fund; Loss Fund

B. Trustee fund.

1. All premiums and assessments charged to members of a pool shall be paid to the trustee fund which fund shall be placed in a designated federally insured depository in Arizona.

C. Loss fund.

1. A pool shall place its loss fund in a designated federally insured depository in Arizona.

The ICA made these changes in response to comments from GRRC staff.

R20-5-724. Investment Activity of a Pool.

~~A.~~ A pool may invest surplus money not needed for immediate cash needs under the following conditions:

1. Investments are limited to:

c. Savings accounts in ~~state~~ banks located in Arizona that are federally insured; and

In response to a comment from the Secretary of State, the ICA deleted the reference to "A" at the beginning of this Section because there is no subsection "B". The ICA also added language to subsection (1)(e) to clarify the use of the word state.

R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims

B. Qualifications of a service company.

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1. A service company shall have ~~satisfactory~~ facilities and equipment to manage, process, and store workers' compensation claims;

The ICA made this change in response to a comment received from GRRC staff that the word "satisfactory" is not quantifiable and should not be used in rules. Other minor grammatical changes were made throughout R20-5-725 to improve the clarity of the rule. Similar changes were made to R20-5-726 as R20-5-726 mirrors R20-5-725.

The ICA deleted the word "satisfactory" from R20-5-727(E) in response to a comment received from GRRC staff that the word is not quantifiable. The ICA also made minor grammatical changes in this Section in response to comments received from GRRC staff.

R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy

B. The Commission shall review the proposal submitted under subsection (A) and approve the proposal within 10 days if the Commission determines that the proposal will abate the deficiency. A pool shall implement the plan no later than 30 days after the date the Commission approves the plan and shall achieve 100% funding within 1 year after the date the Commission approves the plan. Failure to implement the plan is cause for revocation of the pool's certificate of authority under R20-5-739.

E. Failure to comply with an order of abatement within 60 days after the order is issued constitutes cause for revocation of a pool's certificate of authority under R20-5-739.

In response to comments received from GRRC staff, the ICA added language clarifying the word "revocation". The ICA made other minor grammatical changes to improve the clarity of the rule in response to comments received from GRRC staff.

R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

D. A pool shall retain records relating to the formation and operation of the pool. The pool's current board shall know the current location of the records at all times.

... E. Records of a pool are the property of the pool. If records of a pool are in the control or custody of a 3rd third party, the 3rd third party shall immediately surrender the records to a pool, upon request by the pool.

The ICA made these changes in response to comments received from GRRC staff and the Secretary of State.

R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065.

A. Subject to subsection (B), the Commission shall determine the taxes to be paid under A.R.S. § 23-961(G) and A.R.S. § 23-1065(A) by calculating a pool's premiums using 1 one of the following insurance plans selected by a pool:

1. Fixed premium plan:

...c. The taxable premium is calculated as follows: Payroll x applicable

rate - premium discount.

2. Guaranteed cost plan:-

...C. A pool shall submit to the Commission information required on the following forms no later than February 15 of each year:

1. Self-Insured Payroll Report, + and
2. Self-Insured Injury Report.

D. Payment of quarterly tax.

1. The Commission shall calculate quarterly taxes owed under A.R.S. § 23-961(H) or A.R.S. § 23-1065(A) in 1 one of the following ways:

F. In addition to the penalty described under A.R.S. § 23-961(J), failure to pay annual or quarterly taxes as required is cause for revocation of a pool's certificate of authority.

The ICA inserted the multiplication symbol "x" in subsection (1)(c) to correct a typographical error. The ICA made the remaining changes in response to comments received from GRRC staff and the Secretary of State.

R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure

B. The Commission shall deny an application for authority to self-insure if the Commission finds 1 or more of the following conditions:

1. An applicant or pool does not meet the requirements of A.R.S. § 23-961.01,
2. An applicant or pool does not meet the requirements of this Article, or and
3. An applicant or pool is unable to process and pay benefits required under the Arizona Workers' Compensation Act.

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C. A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a ~~duly noticed~~ public meeting. The Commission shall issue written findings and an order granting or denying authorization to self-insure.

D. The Division shall ~~mail serve~~ a copy of the Commission's written findings and order upon the applicant or pool within 10 days of the date the Commission issues its findings and order.

The ICA made these changes in response to comments received from GRRC staff.

E. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide fidelity coverage with evidence of fidelity coverage as required under R20-5-712 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual fidelity coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of fidelity coverage with evidence of fidelity coverage as required under this subsection.

F. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide excess insurance coverage with evidence of excess insurance coverage as required under R20-5-715 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual excess insurance coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of excess insurance coverage with evidence of excess insurance coverage as required under this subsection.

G. In the case of an initial application, an applicant shall deposit the guaranty bond, letter of credit, or other securities as required under R20-5-713 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant deposits the guaranty bond, letter of credit, or other security. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to deposit the guaranty bond, letter of credit, or other securities as required under this subsection.

H. E Subject to subsections (E), (F), and (G), no later than 10 days after If the Commission grants authorization to self-insure, then the Division shall prepare a certificate of authority to self-insure and shall mail the certificate to the self-insured at the business address of the pool listed on the initial or renewal application. In the case of an initial application, the Commission shall not issue the certificate of authority to self-insure until the applicant deposits with the Commission the required bonds, or other securities prior to the effective date stated in the certificate.

The ICA made these changes in response to a comment that an applicant should not be required to purchase excess insurance coverage before approval is obtained from the ICA on an application to self-insure. The ICA agrees and added language that gives an applicant a choice regarding the timing of the purchase the items listed above. The ICA added the new subsections to require that an applicant substitute written confirmations of intent to provide the listed coverage for evidence of actual coverage. This additional language ensures that the required items are in place before an applicant acts as a self-insured entity.

R20-5-735. Right to Request a Hearing

A. An applicant ~~or and~~ pool shall have 10 days from the date the Commission ~~mails serves~~ the findings and order under R20-5-734 to request a hearing.

The ICA made these changes in response to comments from GRRC staff.

R20-5-736. Hearing Rights and Procedures

A. Burden of proof.

2. In a ~~revocation hearing~~ ~~revocations hearings~~, the Commission shall have the burden of proof to establish that the self-insured has committed the acts described in R20-5-739.

D. Filing and service.

1. For purposes of this Section, a document is ~~considered deemed~~ filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.

E. Notice of hearing.

2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or pool as shown on the ~~record~~ ~~record's~~ of the Commission or upon the applicant's or pool's representative if a notice of appearance has been filed by a representative.

The ICA made these changes in response to comments received from GRRC staff

Throughout R20-5-737 the ICA deleted the words "duly noticed" in response to comments received from GRRC staff.

R20-5-738. Request for Review

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A. A party may request review of a Commission decision issued under R20-5-737 by filing with the Commission a written request for review no later than ~~15-10~~ days after the written decision is mailed to the parties.

The ICA made this change in response to comments received from GRRC staff.

R20-5-739. Revocation of Authority to Self-Insure

A. In addition to those specific grounds set forth in this Article, the following constitute grounds for revocation of authority to self-insure for workers' compensation:

6. The willful misstatement ~~misstating~~ of any material fact in an application, report, or statement made to the Commission.

B. Upon receipt of information demonstrating that a pool has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of ~~the its~~ investigation, the Division determines that ~~there is~~ sufficient evidence exists to warrant revocation of a pool's authority to self-insure, then the Division shall present its findings to the Commission.

Throughout the rule package the ICA changed the word "one" to "1", "timeframe" to "time-frame", and corrected punctuation to improve the clarity of the rules.

10. Summary of principal comments and agency response to them.

R20-5-701. Definitions

Principle Comment: Section 701 includes a definition of "NCCT", but "NCCI is not referenced in the Article. The definition of "NCCT" should be eliminated.

Agency Response: The Industrial Commission ("ICA") agrees. The adopted rules do not contain a definition for "NCCI".

R20-5-707. Filing Requirements for Initial Application for Self-Insurance License

Principle Comment: Section 707(B)(14) requires an applicant to provide proof of excess insurance coverage at the time an initial application is filed. This rule requires an applicant to incur premium costs for excess insurance coverage prior to obtaining ICA authorization to self-insure. If the ICA denies an application, an applicant will have incurred premium cost in connection with the issuance of the policy during the pendency of the application which cannot be fully recovered from the excess insurance carrier. Section 707(B)(14) should state that an applicant is required to provide the Commission with written confirmation from an insurer authorized to transact business in Arizona that it will provide excess insurance coverage to the applicant in accordance with the requirement set forth in R20-5-715(B). R20-707(B)(14) should also state that an applicant is required to submit to the Commission a copy of a certificate of insurance or declaration page evidencing excess insurance coverage within 10 days of the Commission's approval of the application.

Agency Response: The ICA agrees and amended the proposed rules to give an applicant the option of providing written confirmation from an insurer authorized to transact business in Arizona that the carrier will provide excess insurance coverage to the applicant in accordance with the requirement of R20-5-715(B). The ICA also amended the rules to provide this option with regard to obtain fidelity coverage, a guaranty bond, letter of credit, or other securities. Because the rules require a pool to obtain fidelity coverage, excess insurance coverage, and a guaranty bond, letter of credit, or other securities, the ICA also amended the proposed rules to require an applicant to substitute the written confirmation with evidence of actual coverage or deposit before authority to self-insure becomes effective. (See Section 734)

R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License

Principle Comment: Section 708(D) should be amended to read "... a copy of the pool's most recent actuarial review of losses and reserves for all known claims, and reserves for incurred but not reported claims." This change is recommended because "incurred, but not reported claims" cannot be included "within all known claims."

Agency Response: The ICA agrees. The ICA amended the proposed rules to reflect this change.

Principle Comment: Section 708(F) and (G) should include a statement that permits individual members of a pool to self-insure themselves under A.R.S. § 23-961 in the event the pool fails to renew its authorization to self-insure for workers' compensation.

Agency Response: The ICA agrees and amended the proposed rules to reflect this change.

R20-5-709. Combined Net Worth

One comment was received regarding this Section. The commentator agreed with the \$1 million net worth requirement.

R20-5-712. Fidelity Policy

Principle Comment: Section 712 should not require that pools obtain a fidelity bond to cover the unlawful acts of its employees. While it is a good decision for a pool to obtain a fidelity bond to cover the unlawful acts of its employees, the decision to obtain a fidelity bond for pool employees should be left up to the pool.

Agency Response: The ICA disagrees. The ICA is given the statutory authority to protect the solvency of the pools and ensure that a pool pays benefits to injured workers. The ICA also has statutory and fiduciary responsibility to the Special Fund

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which is the fund that pays workers' compensation claims of a pool in the event a pool cannot process and pay the claims and has insufficient assets, bonds or securities to cover its liabilities. The procurement of a fidelity bond provides fundamental protection to a pool and members of the pool. By providing this protection, the ICA also provides protection to the Special Fund. The ICA does not agree that such fundamental protection should be left to the discretion of a pool.

R20-5-714. Securities deposited with the Arizona State Treasurer

Principle Comment: Section 714 should be amended to add a subsection that addresses a pool's right to withdraw securities after the pool terminates operation as a self-insured pool.

Agency Response: The ICA disagrees. Liability of a pool and its members continues long after a pool terminates operation as a self-insured entity. Workers' compensation claims have what is known in the industry as a "long tail". In essence, this means that benefits continue to be paid on workers' compensation claims for a many years. Unlike other types of insurance claims, workers' compensation claims can be reopened or rearranged. In some case, benefits to workers are paid for the life of the worker. Workers' compensation claims can include payments to widows and dependents. A pool may terminate operation as a self-insured entity, but its liabilities continue. Equally true, is that financial exposure to the Special Fund continues long after a pool terminates operation as a self-insured entity. The securities are deposited with the State Treasurer to ensure that funds are available to pay claims in the event a pool is unable to process or pay claims. As long as claims of a pool exist, the securities must be available to cover losses that may occur. For these reasons, a pool does not have the right to withdraw securities after a pool terminates operation as a self-insured pool. For these reasons, a pool does not have the right to withdraw a pool securities after a pool terminated operation. A pool does, however, have the right to substitute a letter of credit or guaranty bond for the securities.

R20-5-715. Aggregate and Specific Excess Insurance Policies

Principle Comment: Section 715(C) should be amended to read "... or non-renewal to the other party, to the pool and to the Commission."

Agency Response: The ICA disagrees only because the ICA believes that the rule is written to read what the commentator is proposing. A pool is a "party" to the policy.

Principle Comment: Section 715(D) should substitute the word "instance" with "insurance".

Agency Response: The ICA agrees and amended the proposed rules to correct this typographical error.

Principle Comment: Subsection G of this Section should be amended by adding a subsection that permit a self-insurance pool to apply to the Commission for a maximum self-insured retention of up to \$1 million for the pool after a specified period of time and implementing the higher maximum self-insured retention upon approval by the Commission.

Agency Response: At this point in time the ICA disagrees. The approval of employer associations as self-insured workers' compensation pools is in its infancy. The ICA believes that before pools are given the opportunity to assume greater financial liability pools need the opportunity to accrue assets which are necessary to ensure future solvency. Additionally, before permitting pools to assume greater financial risk, the ICA believes that the self-insurance program established by A.R.S. § 23-961.01 and Article 7 needs to be evaluated, based on actual figures and experience, to determine whether the program is working. The ICA believes that ultimately, having gained knowledge through experience with actual employer association pools, the ICA will revisit this issue and determine whether these pools should be given greater flexibility with regard to maximum self-insured retention levels.

Principle Comment: Section 715(D) should not impose a maximum self-insured retention level for specific or aggregate excess insurance.

Agency Response: The ICA disagrees. The ICA is given the statutory authority to impose criteria that safeguards the solvency of the pools and ensures that workers receive the benefits that they are entitled to receive under the Workers' Compensation Act. The legislature specifically directed the Industrial Commission to adopt rules dealing with specific and aggregate excess insurance and the adopted rule implements the statute.

A specific maximum self-insured retention of \$250,000 and an aggregate of \$5 million or 110% of premiums collected means that a pool will not pay any greater than \$250,000 on any specific claim or any more than \$5 million (or 110% of premiums) for all claims. Requiring excess insurance to cover losses over the retention levels ensures that liabilities of a pool do not become excessive and unmanageable. While some claims may never reach the specific self-insured retention level, other claims easily reach that level (e.g. catastrophic claims, burn, head trauma, or back injuries).

Statistics generated from the processing of no insurance claims by the No Insurance Section of the Industrial Commission reveal that 2.2% of 675 active claims reached the \$250,000 threshold. On average, these claims reached the \$250,000 within 4-5 years. However, 7 claims reached the \$250,000 as follows:

1 claim	4 months
2 claims	9 months
2-claims	1 year
2 claims	2 years

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For those claims that took 1 year or less to reach the \$250,000 level, the Special Fund has expended approximately \$2,432,200.00. This figure does not include the amount that must be reserved for future costs associated with the processing of these claims (millions of dollars).

From an industry standard perspective, the self-insured retention levels adopted in this Section are consistent with self-insured retention levels required by other states and self-insured retention levels offered by excess insurance carriers. Statistics provided by an excess insurance carrier that provides excess insurance coverage for self-insured pools across the country, demonstrate that approximately 1.5% of claims processed will exceed the \$250,000 self-insured retention level within 3-5 years. The self-insured retention level can be exceeded in days or months for catastrophic injuries (including head, burn or back injuries).

Given the foregoing statistics, the ICA believes that the maximum self-insured retention levels are high enough to allow a pool to handle the majority of its own claims, but low enough to protect the pool from bankruptcy. The protection afforded by the self-insured retention levels adopted by the ICA also serves to protect the solvency of the Special Fund. In adopting these self-insured retention levels, the ICA meets the statutory and fiduciary responsibilities that arise under A.R.S. § 23-901 *et seq.* Additionally, the ICA notes that a pool is not prohibited from obtaining excess insurance coverage with lower self-insured retention levels. That decision is left to a pool.

R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds

Principle Comment: Section 717(B) state that a pool shall calculate workers' compensation premiums and rates for a member based upon formulas determined by a rating organization approved by the Arizona Department of Insurance. The rule should include language that requires adherence to a uniform classification system and the experience rating plan from which it is devolved.

Agency Response: The ICA disagrees. First, the methodology used in the adopted rule is consistent with methodology used by the Arizona Department of Insurance. The intent of the ICA was to fashion rules that promote consistency and uniformity between rates and premiums used by workers' compensation pools and those used by workers' compensation insurance carriers. Second, although the ICA questions whether there can be a "uniform classification system" because multiple rating plans may be filed with the Arizona Department of Insurance, by adopting rules that require reliance on filed rating plans, the ICA has attempted to ensure that some uniformity exists with respect to rates and premiums used by workers' compensation pools. Further, the ICA has consulted with the Department of Insurance which agrees with the language adopted in Section 717.

Principle Comment: Section 717 should be amended to allow a pool more flexibility in terms of arranging schedules for the payment of premiums from its members.

Agency Response: The ICA disagrees. The adopted rule requires a new member to pay 25% of its estimated annual premium within 5 days of its admission into a pool. Thereafter, premiums payments can be made monthly or quarterly. The requirement to pay 25% of the assessed premium only applies to the initial admission of new members. The requirement that a new member pay 25% of its premium "up front" ensures an adequate cash flow into the pool. Since the administrative and loss funds of a pool are funded primarily through premium moneys received from its member, it is critical that some initial funding is received from new members. Sufficient money must be available to the pool immediately to ensure that claims can be processed and paid as required under the law.

Principle Comment: Section 717 should be amended to permit a pool to apply for a deviation immediately upon licensure based upon prior experience of the pool's individual members.

Agency Response: The ICA disagrees. A workers' compensation pool does not exist until an employer association is approved to act as a self-insurer by the Industrial Commission. The pool, as an entity, has no data and no experience that can be evaluated to determine whether a deviation from rates is proper. The experience of individual members prior to formation of the pool may not accurately reflect the experience that a pool may have. The ICA believes that it is more accurate and reasonable to evaluate actual experience of a pool before approving a deviation from rates for its member.

R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy

Principle Comment: Section 728 imposes requirements that provide solvency protections for pools. However, the rule should include language that grants the Commission the authority to levy assessments upon members of a pool in the event that the pool liquidates. As the rule is presently written, the authority to impose assessments upon members is implied.

Agency Response: The ICA does not have the statutory authority to impose assessments upon members when a pool liquidates. The authority of the ICA to impose assessments upon members of pool is limited to those situations in which a pool has insufficient funds or assets to cover the liabilities of the pool, but has elected to continue operation as a pool rather than filing for bankruptcy. In those instances, the adopted rules require a pool to file a plan of abatement. The adopted rules further provide that a plan of abatement may include an assessment against members of the pool. This approach enables a pool to determine how it will abate a deficiency and gives a pool the ability to determine when and if an assessment will be imposed on its members. On the other hand, the rules require that a plan of abatement be approved by the Commission. If the plan of abatement will abate the deficiency, then the ICA is required to approve the plan. If the plan does not abate the deficiency, then the ICA will disapprove the plan and issue its own order of abatement. The rule does not specify the methods of abatement that can be ordered by the ICA. In this regard the comment received is correct in that the ability of the ICA to order an assessment is implied. The ICA recognizes that the financial picture of each pool will be different. Likewise, methods to abate a deficiency

will need to be tailored to the specific financial picture of a pool. For these reasons, the rule provides broad authority to the ICA with respect to orders of abatement. The ICA believes that the language of the adopted rule enables the ICA to fulfill its statutory mandate to ensure the solvency of the pools. In light of the foregoing, the ICA believes that no arguments can be made against Section 728.

R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

Principle Comment: Section 729 should be amended to permit pools to retain records via a different media other than hard copy [see A.R.S. 20-157(D)]. The Section should also be amended to provide an express period of time that records must be retained by a pool.

Agency Response: The ICA disagrees that Section 729 needs to be amended. However, the ICA takes the position that Section 729 does not limit recordkeeping to hard copies. The rule is written to allow a pool to determine the manner in which records shall be kept. The ICA also disagrees that an express period of time for retention of records needs to be set forth in the rule. The ICA believes that the records specified in the rule need to be kept as long claims are being processed and paid by a pool.

General comments received unrelated to a specific rule

Principle Comment: The rules should include a Section that requires pools to record and report their loss experience to a rating organization of which they may be a member or subscriber. Rating organizations can assist pools and the ICA by collecting, accumulating, and merging large quantities of data obtained from multiple sources in a variety of formats into an integrated database. From this data, the rating organization can provide a picture of the state of the workers' compensation system in Arizona.

Agency Response: The ICA disagrees. If a pool subscribes to or is a member of a rating organization, then as a member or subscriber of the rating organization, a pool may choose to report its loss experience to the organization. The ICA does not believe, however, that it should require pools to subscribe to or become members of a rating organization. Such a subscription or membership does not affect the solvency of a pool or affect the ability of a pool to process or pay workers' compensation claims. Further, while the statistics generated by a rating organization would be helpful in evaluating the self-insurance program, the ICA presently requires pools to provide to the Commission the same statistics (loss data, experience modification factors). Therefore, at this point in time, the Commission does not think it is appropriate to require pools to subscribe to a rating organization or report loss experience to such an organization.

Principle Comment: The rules far exceed those required by state statute for insurance carriers. There are too many safeguards. It will be too cumbersome and costly to form a pool. The financial safeguards should be more lenient.

Agency Response: The ICA disagrees. The requirements set forth in Article 7 address the items listed in A.R.S. § 23-961.01. Further, as stated previously, the ICA has a statutory responsibility to protect the solvency of pools and ensure that pools pay benefits to injured workers. The safeguards adopted in Article 7 meet this responsibility. The ICA also has statutory and fiduciary responsibilities to the Special Fund. The safeguards adopted in Article 7 meet those responsibilities. In light of these responsibilities, the ICA believes that the risks are too great to modify or lessen the protections set forth in Article 7. Further, based on the experience of the ICA with other self-insured pools and the experience of other states, the ICA strongly disagrees that Article 7 imposes "cumbersome" or overly "costly" requirements.

The ICA evaluated rules of at least 40 states that presently regulate group self-insurance. The ICA prepared an initial draft of rules based on the rules of 5 states that were comparable to the ICA from an organizational and statutory standpoint. This initial rule draft was sent to 160 members of the regulated community (employer associations, worker's compensation insurance carriers, Department of Insurance and interested attorneys). After receiving comments from approximately 25 members of the regulated community, the ICA redrafted the rules and sent another draft to the regulated community for informal comment. The ICA reviewed the 2nd set of comments and redrafted the rules for a 3rd time. Thereafter, the ICA initiated formal rulemaking by filing its notice of proposed rulemaking with the Secretary of State. Prior to publication of the rules, the ICA sent a copy of the proposed rules to employer associations that had submitted comments on the earlier informal rule drafts (approximately 25). The ICA also sent out approximately 500 letters to advise of the proposed rules and the public hearing. As a result of these letters, the ICA was requested to provide 16 additional copies of the proposed rulemaking. Only 2 people commented during the formal rulemaking stage that the requirements of Article 7 are too cumbersome and costly. It is the ICA's position that the majority of persons affected by the rulemaking agree with the adopted rulemaking. The ICA attempted to adopt rules that balance the interests of employer associations, traditional insurance carriers and the ICA. The ICA believes that the adopted rules fulfill the ICA's statutory and fiduciary responsibilities, but also are responsive to the needs of the regulated community. That only 2 people criticized the rules reflects a consensus regarding the rules. Additionally, the ICA believes that if employer associations do not form pools and employers choose to remain insured by traditional insurance carriers, it is because traditional carriers are responding to A.R.S. § 23-961.01 by becoming more competitive. Traditional insurance carriers do not want to lose business. Consequently, they will attempt to "keep the business" by offering attractive rates and services to its customers.

Principle Comment: Rules do not impose burdensome financial requirements. The financial requirements should not be more lenient.

Agency Response: The ICA agrees for the reasons previously listed.

11. Any other matters prescribed by statute that are applicable to the specific rule or class of rules:
None.
12. Incorporation by reference and their location in the rules:
None.
13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of these final rules:
No.
14. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

**ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR
WORKERS' COMPENSATION POOLS ORGANIZED
UNDER A.R.S. § 23-961.01**

Section

- R20-5-701. Definitions
- R20-5-702. Computation of Time
- R20-5-703. Forms Prescribed by the Commission
- R20-5-704. Requirement for Commission Approval to Act as Self-Insurer
- R20-5-705. Duration of Certificate of Authority
- R20-5-706. Time-frames for Processing Initial and Renewal Application for Authority to Self-Insure
- R20-5-707. Filing Requirements for Initial Application for Self-Insurance License
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- R20-5-709. Combined Net Worth
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- R20-5-711. Joint and Several Liability of Members
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- R20-5-715. Aggregate and Specific Excess Insurance Policies
- R20-5-716. Rates and Code Classifications; Penalty Rate
- R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds
- R20-5-718. Financial Statements
- R20-5-719. Board of Trustees
- R20-5-720. Administrator; Prohibitions; Disclosure of Interest
- R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool
- R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting
- R20-5-723. Trustee Fund; Loss Fund
- R20-5-724. Investment Activity of a Pool
- R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims
- R20-5-726. Processing of Workers' Compensation Claims by a Pool
- R20-5-727. Loss Control and Underwriting Programs
- R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy
- R20-5-729. Arizona Office; Recordkeeping; Records Available for Review
- R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission

- R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission
- R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065
- R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division
- R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure
- R20-5-735. Right to Request a Hearing
- R20-5-736. Hearing Rights and Procedures
- R20-5-737. Decision Upon Hearing by Commission
- R20-5-738. Request for Review
- R20-5-739. Revocation of Authority to Self-Insure

**ARTICLE 7. SELF-INSURANCE REQUIREMENTS FOR
WORKERS' COMPENSATION POOLS ORGANIZED
UNDER A.R.S. § 23-961.01**

R20-5-701. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

- "Administrator" means an individual or organization chosen by a board to manage the daily operations of a pool.
- "Applicant" means a worker compensation pool organized under A.R.S. § 23-961.01 that has filed an initial application for authority to self-insure.
- "Board of trustees" or "board" means a body of individuals that manage all operations of a worker compensation pool.
- "Cash flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds received from operations of a business by current liabilities.
- "Certificate of authority" means a document issued by the Commission granting a pool authority to be self-insured for purposes of workers' compensation.
- "Claim" means a worker compensation claim.
- "Code classification" means a number assigned by an approved rating organization that classifies employees.
- "Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.
- "Debt status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds supplied by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Administration Division of the Industrial Commission of Arizona.

"Excess insurance carrier" means an insurance carrier authorized by the Arizona Department of Insurance to issue policies of excess insurance coverage and casualty insurance coverage to a self-insured.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes 3 years of loss information.

"Financial rating organization" means a nationally recognized organization such as Standard & Poor's or Moody's that evaluates and rates securities.

"Fiscal year" means a 12 month cycle that begins from the effective date of authority to self-insure.

"Loss fund" means an account from which money is used to pay all workers' compensation expenses including current and contingent liabilities of a worker's compensation claim of a pool.

"Member" means an employer described in A.R.S. § 23-961.01 that has joined with other employers to form a pool.

"Pool" means a workers' compensation group organized under A.R.S. § 23-961.01.

"Profitability ratio" means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100.

"Quick ratio" means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus trade receivables, by current liabilities.

"Rate" means an assignment of a code classification based on risk as established by a rating organization and approved by the Arizona Department of Insurance.

"Rating organization" means an entity that meets the requirements of A.R.S. § 20-363(F) and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

"Service company" means an entity or organization that is contracted by a pool to receive, process, and pay workers' compensation claims for a pool.

"Trustee fund" means an account into which premiums, investment proceeds, and other revenues are deposited and are used to cover all administrative or operational expenses of a pool.

"Working capital ratio" means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales.

R20-5-702. Computation of Time

A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays, and legal holidays in the computation of time.

B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

R20-5-703. Forms Prescribed by the Commission

The following forms are available upon request from the Commission and contain requests for the information listed in each subsection.

1. Initial Application for Authority to Self-Insure:
 - a. Name of the pool;
 - b. Address and telephone number of the pool's principal office;
 - c. Effective date of formation of the pool;
 - d. Name and address of each member of the pool;
 - e. Two digit standard industrial classification code for each member of the pool;
 - f. Name and address of the industry or trade association, or professional organization to which members of the pool belong;
 - g. Effective date of formation of the industry or trade association, or professional organization to which members of the pool belong;
 - h. Type of business in which members are engaged and length of time in business for each member;
 - i. Explanation of how businesses of members are the same or similar;
 - j. Amount of workers' compensation insurance premiums paid by each member in the preceding year;
 - k. Names and addresses of the board of trustees;
 - l. Name, address, and telephone number of the administrator appointed by the board of trustees;
 - m. Name, address, and telephone number of the service company, if applicable;
 - n. Names, titles, addresses, and telephone numbers of the persons in charge of the loss control and underwriting programs;
 - o. Premium tax plan selection;
 - p. Authorized signature and title of person signing initial application;
 - q. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
 - r. Date of execution of the initial application.
2. Renewal Application:
 - a. Name of the pool;
 - b. Address and telephone number of the pool's principal office;
 - c. Name and address of each member of the pool and the effective date of membership;
 - d. Renewal date of the pool;
 - e. Effective date of initial authority to self-insure;
 - f. Total number of member employees covered by the pool;
 - g. Total payroll of the pool for the last fiscal year;
 - h. Name, address, and telephone number of the administrator;
 - i. Name, address, and telephone number of the service company, if applicable;
 - j. Name, address, and telephone number of the excess insurance carrier;
 - k. Name and address of the companies providing guaranty bond and fidelity policy;
 - l. Name and address of individuals serving on the board of trustees;
 - m. Names, titles, addresses, and telephone numbers of persons in charge of loss control and underwriting programs;

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- n. Authorized signature and title of person signing renewal application;
- o. Statement that all information and assertions contained in the renewal application and the documents accompanying the renewal application are factually correct and true; and
- p. Date of execution of the renewal application.
- 3. Self-Insurance Guaranty Bond Form:
 - a. Pool identification;
 - b. Names of fidelity and surety insurance companies;
 - c. Description of the bond, including the amount and conditions of the bond obligations and liability of surety;
 - d. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety;
 - e. Authorized signatures and titles by pool, surety, and agent; and
 - f. Date of execution of the guaranty bond form.
- 4. Option Election Form:
 - a. Calculation and selection of type of guaranty bond and securities;
 - b. Description of incurred liability and anticipated future liability (compensation and medical) on all open cases for the preceding 4 years and the current year;
 - c. Authorized signature and title of person signing option election form;
 - d. Statement that all information and assertions contained in the form are factually correct and true; and
 - e. Date of execution of the option election form.
- 5. Self-Insured Payroll Report:
 - a. Description of the cumulative payroll for all members of the pool (classification codes, methods and types of pay);
 - b. Amount paid in the preceding calendar year;
 - c. Authorized signature and title of person signing self-insured payroll report;
 - d. Statement that all information and assertions contained in the report are factually correct and true; and
 - e. Date of execution of self-insured payroll report.
- 6. Self-Insured Medical Report:
 - a. Description of costs relating to industrial injuries;
 - b. Reinsurance premiums paid;
 - c. Total expenditures for workers' compensation and occupational disease claims;
 - d. Authorized signature and title of person signing self-insured medical report;
 - e. Statement that all information and assertions contained in the report are factually correct and true; and
 - f. Date of execution of the self-insured medical report.
- 7. Self-Insured Injury Report:
 - a. Description of specific information for the current year and 3 preceding years for each injury requiring payment in excess of \$5000 which includes accumulated amount paid and reserved for each claim in excess of \$5,000;
 - b. Description of all injuries for the current year and 3 preceding years if individual injury required payment of less than \$5,000;
 - c. Authorized signature, title, and telephone number of person signing self-insured injury report;
 - d. Statement that all information and assertions contained in the report are factually correct and true; and
 - e. Date of execution of the self-insured injury report.
- 8. Quarterly Tax Payment Form:
 - a. Name and address of the pool;
 - b. Description and calculation of the quarterly tax and designation of the applicable quarter;
 - c. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for change in the tax rate;
 - d. Description and calculation of any penalty due;
 - e. Authorized signature, title and telephone number of person signing the quarterly tax payment form;
 - f. Statement that all information and assertions contained in the form are factually correct and true; and
 - g. Date of execution of the quarterly tax payment form.
- 9. Application to Add a Member to Self-insured Pool:
 - a. Name of the pool and name of the member to be added to the pool, including if applicable, addresses, corporation, subsidiary, partnership, and trust information;
 - b. Nature and years in business of the member to be added;
 - c. History of business in Arizona and elsewhere for the member to be added;
 - d. Payroll data for each member to be added;
 - e. Work force data for each member to be added;
 - f. Financial data for each member to be added;
 - g. Insurance data for each member to be added;
 - h. Two digit standard industrial classification code for each member of the pool;
 - i. Workers' compensation claims, loss and performance history for the member to be added;
 - j. Authorization by board resolution approving addition of each new member;
 - k. Authorized signature and title of person signing application;
 - l. Statement that all information and assertions contained in the application are factually correct and true; and
 - m. Date of execution of the application.
- 10. Notice Confirming Addition of Member to Pool:
 - a. Name of the pool;
 - b. Name and address of the new member;
 - c. Effective date of membership;
 - d. Rate and code classification to be applied to new member;
 - e. Standard industrial classification code for new member;
 - f. Authorized signature and title of person signing notice;
 - g. Statement that all information and assertions contained in the notice are factually correct and true; and
 - h. Date of execution of the notice.
- 11. Notice of Termination of Membership:
 - a. Name and address of pool;
 - b. Effective date of termination;
 - c. Name and address of the member to be terminated, identified as follows:

- i. All names and addresses of every location used by the member;
- ii. If the member is a partnership, the names and addresses of all the partners;
- iii. If the member is a corporation doing business under a number of divisions, the notice shall state the names of all the divisions of the corporation; and
- iv. If a member changes names, both the new and former names.
- d. Authorized signature, title and telephone number of person signing notice;
- e. Statement that all information and assertions contained in the notice are factually correct and true; and
- f. Date of execution of the notice.

R20-5-704. Requirement for Commission Approval to Act as Self-Insurer

A pool does not have authority to act as a self-insurer under A.R.S. § § 23-961 and 23-961.01 unless the pool receives and maintains a certificate of authority from the Commission.

R20-5-705. Duration of Certificate of Authority

Except as provided in this subsection, a certificate of authority is valid for 1 fiscal year. The Commission may renew the certificate on an annual basis upon application by a pool. If a pool timely files a complete renewal application under this Article, the Commission shall consider the existing certificate of authority valid, subject to compliance with A.R.S. § 23-901 et seq. and this Article, until a new certificate of authority is issued or an order of the Commission denying a renewal application becomes final.

R20-5-706. Time-frames for Processing Initial and Renewal Application for Authority to Self-Insure

A. Administrative completeness review.

1. Initial application. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform an applicant by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient.
2. Renewal application. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961.01 and this Article. The Division shall inform a pool by written notice whether the application is complete or is deficient within the time-frame provided in this subsection. If the renewal application is incomplete, the Division shall include in its written notice to the pool a complete list of the missing information. The Division shall deem the application withdrawn if a pool fails to file a complete application within 45 days of being notified by the Division that its application is incomplete or deficient, except that failure to file the financial and actuarial reports required under R20-5-708(C) shall not cause the Division to deem the application withdrawn if a pool files the financial and actuarial reports with the

Division within 120 days after the end of the pool's fiscal year.

B. Substantive review.

1. Initial application. Within 70 days after the Division deems an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.
2. Renewal application. Within 40 days after the Division deems a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961.01 and this Article and shall issue an order granting or denying authority to self-insure.

C. Overall review.

1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Renewal application. The overall review period shall be 60 days, unless extended under A.R.S. § 41-1072 et seq.

R20-5-707. Filing Requirements for Initial Application for Self-Insurance License

A. Initial application for authorization to self-insure.

1. An application for authority to self-insure shall be completed on forms approved by the Commission.
2. An application for authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division.
3. An application shall be typewritten or written in ink in legible text.
4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized.
5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.

B. The Commission shall deem an initial application for authority to self-insure complete if an applicant provides the following information with the initial application:

1. A copy of the contract required under A.R.S. § 23-961.01 establishing the pool;
2. A copy of the articles of incorporation establishing the pool, if applicable;
3. A copy of the trust agreement establishing the pool, if applicable;
4. A copy of the by-laws governing the operations of the pool;
5. An original, signed application to join the pool from every employer receiving approval from the board to join the pool;
6. A resolution from the board approving employers for membership in the pool;
7. A certified copy of an audited financial statement or an internally reviewed and signed financial statement for each employer applying for membership in the pool for the most current and prior 2 years that, considered collectively, demonstrate that the combined net worth of the employers applying for membership at the time of the initial application is not less than \$1,000,000;
8. A copy of the following financial ratios for each employer applying for membership in the pool:
 - a. Cash flow ratio;
 - b. Current ratio;
 - c. Debt status ratio;
 - d. Profitability ratio;
 - e. Quick ratio; and

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- f. Working capital ratio.
9. A detailed description of the loss control program required under R20-5-727, including a description of training programs and safety requirements implemented or to be implemented;
10. A written statement from each member with an experience modification rate greater than 1.10 describing the causes of the member's experience modification rate and outlining remedial measures the member has taken and will take to lower the member's experience modification rate;
11. An original, signed fidelity policy, or a certified copy, that meets the requirements of R20-5-712, or written confirmation from an authorized insurance company that it will provide fidelity coverage to the applicant as required under R20-5-712 which coverage is effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
12. An original, signed guaranty bond, securities, or letter of credit that meets the requirements of R20-5-713 or any of the following:
- a. Written confirmation from an authorized insurance company that it will provide a guaranty bond to the applicant as required under R20-5-713 which shall be deposited with the Industrial Commission before approval for self-insurance is effective;
 - b. Written confirmation from a financial institution that it will provide a letter of credit to the applicant as required under R20-5-713 which is effective when approval for self-insurance is effective; or
 - c. Written confirmation from a pool that it will obtain securities as required under R20-5-713 which shall be deposited with the Arizona State Treasurer before approval for self-insurance is effective.
13. A completed and signed Option Election Form and Self-Insurance Bond Form;
14. A copy of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715 or written confirmation from an authorized insurance company that it will provide excess insurance coverage to the applicant as required under R20-5-715. The excess coverage shall be effective on the date the applicant is approved by the Industrial Commission to begin self-insurance;
15. A copy of the signed agreement or contract of hire between a board and the administrator of the pool;
16. A designation of a service company and a copy of the signed agreement between the service company and pool that meet the requirements of R20-5-725 or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
17. A list of all rates by code classification to be used by the pool to calculate premiums;
18. A statement showing how premiums shall be calculated for members;
19. A detailed description of the underwriting program required under R20-5-727;
20. A feasibility study by a member of the American Academy of Actuaries (MAAA) or a Fellow of the Casualty Actuarial Society (FCAS) that documents the rate structure needed to set premium levels to cover potential losses and expenses of the pool; and
21. A schedule showing net workers' compensation premiums paid, total losses incurred, and experience modifi-

cation rates for the 3 preceding years for each employer applying for membership in the pool.

R20-5-708. Filing Requirements for Renewal Application for Self-Insurance License

- A. A self-insured pool seeking renewal of an authority to self-insure for workers' compensation insurance shall file a renewal application 30 days before the existing certificate of authority expires. A pool shall maintain all bonds, policies, and contracts required under this Article while a renewal application is pending before the Commission. The Commission shall deem a renewal application withdrawn if a pool fails to maintain all bonds, policies, and contracts required under this Article.
- B. A renewal application shall meet the following requirements:
- 1. An application for renewal of authority to self-insure shall be completed on a form approved by the Commission;
 - 2. An application for renewal of authority to self-insure shall be filed with the Division. An application is considered filed when it is received at the office of the Division;
 - 3. An application shall be typewritten or written in ink in legible text;
 - 4. The administrator of a pool shall sign the application. The signature of the administrator shall be notarized; and
 - 5. The administrator shall verify, in writing, that the information contained in and submitted with the application is true and correct.
- C. A self-insured pool shall provide the following information at the time the pool files a renewal application:
- 1. An updated, completed and signed Option Election Form;
 - 2. A continuation certificate for the guaranty bond or letter of credit signed by an authorized representative of the surety or bank in an amount equal to the amount set forth in the updated Option Election Form and that meets the requirements of R20-5-713;
 - 3. A confirmation of excess insurance policies issued by an authorized carrier that meet the requirements of R20-5-715;
 - 4. A copy of a signed service contract that meets the requirements of R20-5-725 designating an approved service company or a written statement with supporting documentation required under R20-5-726 requesting authorization to process claims in-house;
 - 5. A continuation certificate for the fidelity policy that meets the requirements of R20-5-712;
 - 6. A statement of any change made in the rates and code classifications utilized by the pool to calculate workers' compensation premiums;
 - 7. A statement of any change in the calculation method of a premium for each member;
 - 8. A statement describing the expenses paid from the trustee fund and the loss fund expressed in a dollar amount and as a percentage of the total premiums collected by the pool in the preceding fiscal year;
 - 9. A copy of the current contract or agreement of hire between the pool and administrator; and
 - 10. A copy of the current delegation agreement between the board of trustees and administrator, if applicable, under R20-5-719(C).
- D. No later than 120 days after the end of a pool's fiscal year, the pool shall file with the Division a copy of the pool's most

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recent audited annual financial statements and a copy of the pool's most recent actuarial review of:

- 1) losses and reserves for all known claims, and
- 2) reserves for incurred but not reported claims.

- E. The Commission shall deem a renewal application complete when a pool provides the information required under subsections (C) and (D).
- F. If a pool does not file a renewal application, each member of the pool shall provide the Commission proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the pool's certificate of authority expires.
- G. If a pool's renewal application is deemed withdrawn under this Section, each member of the pool shall provide proof of compliance with A.R.S. § 23-961(A) no later than 10 days after the date the Commission deems the application withdrawn.

R20-5-709. Combined Net Worth

A pool shall ensure that the combined net worth of its members is at least \$1 million at the time the pool files an initial application for authority to self-insure.

R20-5-710 Similar Industry Requirement

The Commission shall consider the following in determining whether 2 or more employers meet the similar industry requirement of A.R.S. § 23-961.01:

1. Two digit standard industrial classification code established by the 1987 *Standard Industrial Classification Manual* assigned to an employer applying for membership in the pool; and
2. Other information describing or concerning the business of an employer applying for membership in the pool. The Commission may solicit additional written or oral information from a pool or others to assist the Commission in determining whether 2 or more employers are engaged in a similar industry.

R20-5-711. Joint and Several Liability of Members

- A. The joint and several liability provision described under A.R.S. § 23-961.01(E) shall include the following meaning:
1. Liability of members. Each member is liable for its own workers' compensation claims or losses incurred during the member's period of membership in the pool to the extent that the pool does not pay the claims or losses. A member's liability for its own claims or losses continues for the life of the claims and continues notwithstanding the pool's inability to process or pay the member's claims or losses. Failure of the pool to comply with the provisions of the Arizona Workers' Compensation Act relating to payment and processing of claims shall result in the assignment of the claims to the State Compensation Fund under A.R.S. § 23-966 and shall not relieve a member of liability for its own losses or claims. In the event that claims are assigned to the State Compensation Fund under A.R.S. § 23-966, the Industrial Commission shall have a right of reimbursement against the member for the amount paid by the State Compensation Fund for the member's own claims and losses, including costs, necessary expenses and reasonable attorney's fees, to the extent that such claims and losses are not covered by the pool's bonds or assets.
 2. Liability of a pool. The pool shall pay all claims for which each member incurs liability during each member's period of membership. The pool shall defend, in the name of and on behalf of any member, any action or other proceeding which may arise or be instituted against a member as a result of injury or death covered

by the Arizona Workers' Compensation Act and accompanying rules. The pool shall pay all legal costs and all expenses incurred for investigation, negotiation or defense related to such action or proceeding. The pool shall also pay all judgments or awards, and all interest due and accruing after a judgment.

- B. The joint and several liability clause required under A.R.S. § 23-961.01 to be included in each agreement or contract to establish a pool shall include the language in subsection (A)(1) and (A)(2).
- C. The joint and several liability clause required under A.R.S. § 23-961.01(E) applies to any agreement used to form a pool on a cooperative or contract basis, through a joint formation of a nonprofit corporation, or by the execution of a trust agreement.
- D. A pool shall ensure that all members read and agree, in writing, to the joint and several clause required under A.R.S. § 23-961.01 and described in subsection (A).
- E. Failure to comply with the requirements of A.R.S. § 23-961.01(E) and this Section is cause for revocation of authority to self-insure.

R20-5-712. Fidelity Policy

- A. A pool shall obtain and maintain during all periods of self-insurance a fidelity policy to protect the pool from unlawful actions of the following:
1. Individuals appointed to the pool's board of trustees (individual and collective liability).
 2. Administrator of the pool, and
 3. Employees of the pool.
- B. The amount of the fidelity policy in subsection (A) shall be at least \$1 million. A pool may purchase a fidelity policy in excess of \$1 million if the pool determines that a policy in excess of \$1 million is necessary to protect members of the pool from damages resulting from misrepresentation or misuse of any monies or securities owned, controlled, or managed by the board, administrator or employees of the pool.
- C. The pool shall provide the Commission proof of the fidelity policy as required under R20-5-707 and R20-5-708.

R20-5-713. Guaranty Bond

- A. A pool shall obtain and maintain during all periods of self-insurance a guaranty bond equal to the greater of either:
1. 125% of the total outstanding accrued liability as reflected in the option election form described in subsection (B); or
 2. \$200,000.
- B. A pool shall complete and sign an option election form when an initial or renewal application is filed to determine the amount of the bond or securities required to cover the pool's losses. A pool shall ensure that the information contained in the option election form is in agreement with the data provided in the actuarial report. A guaranty bond or continuation certificate for the guaranty bond shall be in the amount established in the option election form.
- C. A guaranty bond or continuation certificate for the guaranty bond filed with the Commission shall bear the effective date of the certificate of authority under which the pool is authorized to self-insure. The guaranty bond or continuation certificate shall be valid for a period of 1 year, subject to annual renewal in the amount established in the Option Election Form filed with a renewal application.
- D. A guaranty bond or continuation certificate for the guaranty bond shall be issued by an insurance carrier authorized by the Arizona Department of Insurance to transact fidelity and surety insurance in Arizona. The guaranty bond and continu-

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ation certificate shall be executed by an authorized agent of a surety, as evidenced by a certified power of attorney, and countersigned by a licensed resident agent.

- E. Instead of posting a guaranty bond, a pool may either deposit with the Commission for transmittal to the Arizona State Treasurer, bonds of the United States or other securities. The amount of the bond or securities shall bear a face value equal to the requirements of subsections (A) and (B).
- F. Instead of posting a guaranty bond, a pool may obtain a letter of credit. The amount of the letter of credit shall be equal to the requirements of subsections (A) and (B).
- G. The Commission shall not accept certificates of deposit instead of a guaranty bond, securities, or letter of credit.

R20-5-714. Securities Deposited with the Arizona State Treasurer

- A. Any securities deposited with Arizona State Treasurer under R20-5-713(E) shall be registered as follows: "The Industrial Commission of Arizona, in trust for the fulfillment by (name of pool), of (name of pool's) obligations under the Arizona Workers' Compensation Act."
- B. The securities shall be held by the State Treasurer, as custodian, subject to the order of and in trust for, the Industrial Commission of Arizona.
- C. The Commission shall have the following powers with regard to securities held by the State Treasurer:
 - 1. To collect or order the collection of the securities as they become due;
 - 2. To sell or order the sale of the securities, or any part of the securities; and
 - 3. To apply or order the application of the proceeds of the sale of securities, to the payment of any award rendered against the pool in the event of a default in the payment of a pool's obligations under the Arizona Workers' Compensation Act.
- D. The Commission shall remit, upon request from a pool that has deposited securities for transmittal to the State Treasurer, interest coupons on securities as they mature.

R20-5-715. Aggregate and Specific Excess Insurance Policies

- A. A pool shall maintain aggregate and specific excess insurance policies during all periods of self-insurance.
- B. The Commission shall not consider policies of aggregate and specific excess insurance when determining a pool's ability to fulfill its financial obligations under the Arizona Workers' Compensation Act, unless the policies are issued by a casualty insurance company authorized by the Arizona Department of Insurance to transact business in Arizona.
- C. A pool or insurance company seeking to cancel or refuse renewal of aggregate and specific excess insurance policies shall provide 90 days written notice of the proposed cancellation or non-renewal to the other party to the policies and to the Commission. The written notice shall be by registered or certified mail. Failure to provide notice as required by this Section precludes cancellation or non-renewal of the policies.
- D. Policy and Retention Amounts.
 - 1. Policy and retention amounts for specific and aggregate excess insurance for a pool shall be as follows:
 - a. Maximum retention for specific excess insurance shall not exceed \$250,000. Specific excess insurance shall be provided to the statutory limit; and
 - b. Maximum retention of aggregate excess insurance shall not exceed 110% of collected premiums. Total aggregate insurance coverage shall not be less than \$5,000,000.

- 2. Aggregate and specific excess insurance policies shall state that payments of workers' compensation benefits on a claim made by a member employer, pool, or surety under a bond or through the use of other approved securities shall be applied toward reaching the retention level in the policy.

R20-5-716. Rates and Code Classifications; Penalty Rate

- A. A pool shall only use rates and code classifications obtained from a rating organization licensed by the Arizona Department of Insurance.
- B. A pool may apply a penalty rate in excess of an annual premium to any member with an unfavorable loss experience, provided the pool provides written notice to the member 30 days before the effective date of the change in rate.

R20-5-717. Gross Annual Premium of Pool; Calculation and Payment of Workers' Compensation Premiums; Discounts; Refunds

- A. The gross annual workers' compensation premium for a pool shall be sufficient to fund the administrative expenses and total incurred losses of the pool.
- B. A pool shall calculate a member's workers' compensation premium and experience modification rate using formulas described in a rating plan that meets the following:
 - 1. The rating plan is filed by an Arizona licensed rating organization, and
 - 2. The rating plan has not been disapproved by the Arizona Department of Insurance.
- C. Each member shall pay to a pool the premium due in equal monthly or quarterly payments for the premium year, except that upon admission into a pool, a new member shall pay no later than 5 days after the effective date of membership not less than 25% of the annual premium calculated for the new member. The remaining premium due after a new member has advanced 25% of the annual premium shall be paid in equal monthly or quarterly payments for the premium year. A pool shall permit a member to pay a premium in advance of the monthly or quarterly schedule.
- D. Deviations from rates.
 - 1. A pool shall not deviate from established workers' compensation rates unless the pool complies with the following:
 - a. The deviation is based upon the expense and loss experience of the pool.
 - b. The deviation is supported and justified by an actuary's feasibility study, and
 - c. The pool provides the information required under this subsection to the Division and receives approval from the Division.
 - 2. The Division shall approve the deviation if the deviation is based upon the expense and loss experience of a pool and is justified in an actuary's feasibility study.
- E. Refunds. A pool may declare a refund of surplus money, including excess investment income, to its members under the following conditions:
 - 1. Surplus money exists, including excess investment money, for a fiscal year in excess of the amount necessary to meet all financial obligations for the fiscal year, including financial obligations arising from incurred but not reported claims;
 - 2. Total assets of a pool are greater than total liabilities for each fiscal year;
 - 3. An actuary approves the amount of the refund;
 - 4. The amount of refund is a fixed liability of the pool at the time the refund is declared; and

5. The board sets a date for the refund that shall not be less than 12 months after the end of the fiscal year in which the excess is reported.

R20-5-718. Financial Statements

- A. A pool shall ensure that a financial statement is prepared annually at the end of its fiscal year by a certified public accountant who has experience in auditing insurance carriers or self-insured pools. The financial statement shall be accompanied by an actuarial report regarding reserves for claims and associated expenses, and claims incurred, but not reported.
- B. A pool shall ensure that reported reserves in a financial statement are established based on 110% of an actuary's best estimate.
- C. A pool shall ensure that an actuarial opinion is rendered by an actuary who is a member of the Academy of Actuaries (MAAA) or a fellow of the Casualty Actuarial Society (FCAS).
- D. A pool shall ensure that the pool's annual financial statement described in subsection (A) is audited by a certified public accountant. The audit shall include:
 1. An evaluation and statement from the certified public accountant whether invested surplus money was invested in compliance with R20-5-724;
 2. A description of how the pool operates; and
 3. A statement whether the pool complied with statutes and rules governing self-insured workers' compensation pools as it relates to financial matters.
- E. Upon request by the Commission or within 120 days after a pool's fiscal year ends, a pool shall file its annual financial statement with the Commission. If a pool stops providing coverage on an ongoing basis or fails to file a renewal application for authorization to self-insure, then the pool shall provide its annual financial statement within 120 days after the pool's fiscal year ends.

R20-5-719. Board of Trustees

- A. A pool shall be managed by a board of trustees consisting of at least 5 individuals elected for a stated term of office. At least 2/3 of a board shall be from the membership of the pool.
- B. Minimum duties and responsibilities of a board. In addition to those duties and responsibilities provided by law, the duties of a board shall include:
 1. Responsibility for all operations of a pool;
 2. Ensuring compliance with this Article and the applicable provisions of the Arizona Workers' Compensation Act;
 3. Hiring of an administrator to manage the daily operations of a pool;
 4. Reviewing and taking action on applications for membership in a pool;
 5. Contracting with a service company or seeking authorization from the Commission to process workers' compensation claims in-house;
 6. Determining the premium to be charged to a member;
 7. Investing surplus monies in compliance with this Article and other applicable law;
 8. Enacting procedures that limit disbursement of money to payment and expenses associated with claims processing and administrative expenses necessary to conduct the operations of the pool;
 9. Ensuring that the pool complies with statutory accounting principles (SAP) and provides accurate financial information to enable complete and accurate preparation of financial reports;

10. Maintaining all records and documents relating to the formation and ongoing operations of the pool; and
11. Ensuring that accounts and records of the pool are audited as required under this Article.

C. Delegation of board duties to administrator.

1. Except as prohibited by law, a board may delegate to an administrator the duties the board determines proper.
2. Delegation of duties from a board to an administrator shall be in writing. A copy of the delegation agreement shall be provided to the Commission with each renewal application.

D. Board prohibitions. A board or board trustee shall not commit or perform the following acts:

1. Extend credit to members for payment of a premium;
2. Utilize money collected as premiums for a purpose unauthorized by this Article;
3. Borrow money from a pool or in the name of a pool without providing written notice to the Commission of the nature and purpose of the loan; and
4. Approve admission into a pool an employer who has a negative net worth and whose admission would impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.

R20-5-720. Administrator; Prohibitions; Disclosure of Interest

- A. An administrator of a pool shall not be a member of a board of trustees of a workers' compensation pool.
- B. An administrator shall not commit any of the acts described in R20-5-719(D).
- C. An administrator shall disclose to a board any actual or perceived employment or financial interest that the administrator or administrator's family has in any potential provider of services or insurance coverage to the pool. The administrator shall disclose the interest before a contract or agreement is reached with the company or business providing the service or coverage. If a pool has an existing contract or agreement in which a prospective administrator or administrator's family has an actual or perceived employment or financial interest, the administrator shall disclose the interest before accepting a position as administrator for the pool. It is the responsibility of a board to identify for a prospective administrator current providers of services and coverage to the pool.

R20-5-721. Admission of Employers into an Existing Workers' Compensation Pool

- A. An employer that meets the requirements of A.R.S. § 23-961.01 and this Article that seeks to join an existing pool shall submit an application for membership to the board of trustees of the pool, or the board's designee, on a form approved by the Commission.
- B. Consideration of application by a board.
 1. A board shall approve or deny admission in the pool according to the bylaws of the pool and other applicable statutes and rules.
 2. Upon approval of admission of an employer by a board, the board shall transmit the original application of the employer and board resolution approving membership to the Commission for consideration and approval.
- C. Commission Approval.
 1. Except as provided in subsection (C)(2), within 7 days after receiving an employer application described in subsection (B)(2), the Division shall advise the pool whether the employer application is complete. Within 45 days after receiving a complete employer application described in subsection (B)(2), the Commission shall

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consider the application and shall approve the admission of an employer into a pool if each of the following requirements are met:

- a. The employer meets the requirements of A.R.S. § 23-961.01 and this Article;
 - b. Admission of the employer into the pool does not impair the ability of the pool to meet the requirements of A.R.S. § 23-961.01 and this Article;
 - c. Admission of the employer into the pool does not impair the ability of the pool to meet its financial obligations under the Arizona Workers' Compensation Act.
2. After a pool has completed 1 year of operation, the pool may request Commission authorization to admit new members without Commission approval. Within 30 days after receiving such a request, the Commission shall consider and approve the request to add members to a pool without Commission approval if the pool meets the following:
- a. The pool uses the similar industry requirement set forth in R20-5-710 and provides a list or description of businesses that the pool will consider as being similar; and
 - b. The pool adopts as its own criteria for admission of new employers the criteria set forth in subsection (C)(1) and provides financial standards that the pool shall apply to employers seeking admission into the pool.
3. The Commission shall issue written findings and an order either approving or denying admission of an employer into a pool under subsection (C)(1) or approving or denying authorization to add members without Commission approval under subsection (C)(2). The Commission shall mail the findings and order upon the interested parties. The written findings and order is final unless a party files a request for hearing with the Administration Division within 10 days after the findings and order is issued. Hearing rights and procedure are governed by R20-5-736, R20-5-737 and R20-5-738.
- D. Admission of an employer under subsection (C)(2).**
1. A pool shall require an employer applying for membership in the pool to provide a financial report that is either a certified audited financial statement or an internally reviewed and signed financial statement certified by an officer or representative of the employer applying for membership.
 2. If a pool approves admission of a new employer into the pool, the pool shall send written notice to the Commission, on a form approved by the Commission, within 10 days and prior to the effective date of membership, confirming that the pool has admitted a new member.
 3. In addition to the notice required under subsection (D)(2), the pool shall also provide to the Commission, the board resolution approving membership and a copy of the employer's application for admission into the pool.

R20-5-722. Termination by a Member in a Pool; Cancellation of Membership by a Pool; Final Accounting

- A.** A member of a pool may terminate its participation in the pool or submit to cancellation by a pool under the bylaws of the pool and other applicable statutes and rules.
- B.** A pool shall provide the Commission written notice of a member's intent to terminate membership or a pool's intent to cancel a member's participation in the pool at least 30 days

before the termination or cancellation is effective on a form approved by the Commission.

- C.** A pool shall provide a final accounting and settlement of the obligations of or refunds to a terminated or canceled member when all incurred claims are concluded, settled, or paid.

R20-5-723. Trustee Fund; Loss Fund

- A.** A pool shall maintain a trustee fund and a loss fund.

B. Trustee fund.

1. All premiums and assessments charged to members of a pool shall be paid to the trustee fund which fund shall be placed in a designated federally insured depository in Arizona.
2. A pool shall create a loss fund from the trustee fund.
3. A pool shall pay administrative expenses of the pool from the trustee fund.
4. Money from the trustee fund shall be transferred to the loss fund as needed to enable a pool to pay from the loss fund cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

C. Loss fund.

1. A pool shall place its loss fund in a designated federally insured depository in Arizona.
2. A pool shall pay all workers' compensation expenses from the loss fund.
3. A loss fund shall be maintained at all times by an authorized service company or administrator charged with processing and paying workers' compensation claims.
4. A pool shall ensure that its loss fund is financially able to cover current cash needs related to liabilities imposed or arising under the Arizona Workers' Compensation Act.

R20-5-724. Investment Activity of a Pool.

A pool may invest surplus money not needed for immediate cash needs under the following conditions:

1. Investments are limited to:
 - a. United States Government bonds;
 - b. United States Treasury notes;
 - c. Municipal and corporate bonds described under subsections (A)(2), (A)(3), and (A)(4);
 - d. Certificates of deposit;
 - e. Savings accounts in banks located in Arizona that are federally insured; and
 - f. Common or preferred stock.
2. Corporate and municipal bonds are restricted to the top 3 major investment grades as determined by 2 financial rating services;
3. Not more than 5% of a corporate municipal bond portfolio is invested in any 1 corporation or municipality;
4. Not more than 30% of the market value of a portfolio is in corporate and municipal bonds;
5. Not more than 20% of the market value of an investment portfolio is in common and preferred stocks; and
6. Not more than 5% of a common and preferred stock portfolio is invested in any 1 corporation.

R20-5-725. Service Companies; Qualifications; Contracts; Transfer of Claims

- A.** A pool shall obtain the services of a service company to process the pool's workers' compensation claims unless the pool obtains permission to process its own workers' compensation claims from the Commission under R20-5-726.
- B. Qualifications of a service company.**
 1. A service company shall have facilities and equipment to manage, process, and store workers' compensation claims;

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2. If required by law, a service company shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the service company shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Worker's Compensation Act;
3. Service company personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.
- C. A service company shall process and pay each worker's compensation claim in compliance with the Arizona Workers' Compensation Act and the rules. A contract between a pool and service company shall include this requirement.
- D. Transfer of claims from 1 service company to another service company.
 1. The transfer of claims from 1 service company to another service company shall be handled in a way that does not interfere with or interrupt the processing of a worker's compensation claim.
 2. A service company transferring a worker's compensation claim shall communicate to the new service company the historical claims processing activity associated with the worker's compensation claim, and shall provide an original or copy of every document required for continued processing of the worker's compensation claim.
 3. A pool shall immediately provide written notice to the Industrial Commission Claims Division of any transfer of a worker's compensation claim from 1 service company to another.

R20-5-726. Processing of Workers' Compensation Claims by a Pool

- A. The Commission shall permit a pool to process its own workers' compensation claims if the pool provides information and supporting documentation establishing the following:
 1. The pool has facilities and equipment to manage, process, and store its own workers' compensation claims;
 2. If required by law, a pool shall ensure that a licensed claims adjuster processes all workers' compensation claims. If a licensed claims adjuster is not required by law to process claims, then the pool shall ensure that workers' compensation claims are processed by persons with experience, training, and knowledge of the following:
 - a. Processing of Arizona workers' compensation claims; and
 - b. Arizona Workers' Compensation Act;
 3. Pool personnel processing workers' compensation claims shall attend and complete training provided by the Commission Claims Division.
- B. A pool shall pay and process workers' compensation claims in compliance with the Arizona Workers' Compensation Act and the rules.

R20-5-727. Loss Control and Underwriting Programs

- A. A pool shall maintain during all periods of self-insurance a loss control program that includes, at a minimum, written safety requirements and training programs for all employees of members.
- B. A pool shall maintain during all periods of self-insurance an underwriting program that enables the pool to calculate and

determine workers' compensation premiums due and to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article.

- C. A pool shall ensure those persons with education, experience, or training in loss control administer the loss control program.
- D. A pool shall ensure those persons with education, experience, or training in underwriting administer the underwriting program.
- E. A pool shall maintain facilities and equipment to implement the loss control and underwriting programs.

R20-5-728. Insufficient Assets or Funds of a Pool; Plans of Abatement; Notice of Bankruptcy

- A. A pool shall immediately provide written notice to the Commission if collected premiums and earned investment income for a fiscal year are insufficient to pay benefits under the Arizona Workers' Compensation Act for all reported workers' compensation claims and expenses for the year. When a pool provides notice to the Commission of the deficiency, the pool shall also provide a written proposal to achieve 100% funding. The proposal may include the following:
 1. Use of premiums collected in other fiscal years, but not necessary for payment of claims or expenses in the year collected;
 2. Use of investment earnings associated with other fiscal years, but not necessary for payment of claims or expenses in the year in which associated; or
 3. Assessment of members.
- B. The Commission shall review the proposal submitted under subsection (A) and approve the proposal within 10 days if the Commission determines that the proposal will abate the deficiency. A pool shall implement the plan no later than 30 days after the date the Commission approves the plan and shall achieve 100% funding within 1 year after the date the Commission approves the plan. Failure to implement the plan is cause for revocation of the pool's certificate of authority under R20-5-739.
- C. If, as a result of an audit or examination by either a pool or the Commission, it appears that the assets of a pool are insufficient to enable the pool to discharge the pool's responsibilities under the Arizona Workers' Compensation Act and this Article, the Commission shall notify the administrator and the board of the deficiency and issue an order to abate the deficiency.
- D. The Commission has authority to include in its order of abatement issued under subsection (C) a provision that a pool shall not add new members to the pool until the deficiency is abated.
- E. Failure to comply with an order of abatement within 60 days after the order is issued constitutes cause for revocation of a pool's certificate of authority under R20-5-739.
- F. A pool shall provide immediate written notice to the Commission of any bankruptcy filing by the pool.

R20-5-729. Arizona Office; Recordkeeping; Records Available for Review

- A. A pool shall maintain an office in Arizona.
- B. A pool shall ensure that all financial reports and minutes are signed by an authorized representative of the pool.
- C. A pool shall make board meeting minutes, reports or other documents concerning payroll, audits, investments, experience rating, or other information concerning the pool available to the Commission upon request.

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- D. A pool shall retain records relating to the formation and operation of the pool. The pool's current board shall know the current location of the records.
- E. Records of a pool are the property of the pool. If records of a pool are in the control or custody of a 3rd party, the 3rd party shall immediately surrender the records to a pool, upon request by the pool.

R20-5-730. Order for Additional Financial Information; Examination of Accounts and Records by Commission

If the Commission questions a pool's financial ability to pay workers' compensation claims under the Arizona Workers' Compensation Act, the Commission may order the pool to provide additional financial information from the pool's auditor or may order an independent financial examination of the pool.

R20-5-731. Assignment of Claims Under A.R.S. § 23-966; Obligation of Member to Reimburse the Commission

The Commission shall assign all workers' compensation claims of a pool to the State Compensation Fund under A.R.S. § 23-966 in the event that a pool files for bankruptcy or a pool is unable to process or pay benefits as required under the Arizona Workers' Compensation Act. In the event that the Commission assigns workers' compensation claims to the State Compensation Fund under A.R.S. § 23-966, the Commission shall have a right of reimbursement against any member of a pool for the amount paid by the State Compensation Fund for the member's claims and losses, including reasonable administrative costs, to the extent that such claims and losses are not covered by the pool's bonds or assets.

R20-5-732. Calculation and Payment of Taxes under A.R.S. § 23-961 and A.R.S. § 23-1065

- A. Subject to subsection (B), the Commission shall determine the taxes to be paid under A.R.S. § 23-961(G) and A.R.S. § 23-1065(A) by calculating a pool's premiums using 1 of the following insurance plans selected by a pool:
1. Fixed premium plan:
 - a. A plan in which neither losses nor incurred loss reserves are used to calculate a premium;
 - b. A discount is allowed for premium size; and
 - c. The taxable premium is calculated as follows: Payroll x applicable rate - premium discount.
 2. Guaranteed cost plan:
 - a. A plan that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payments and incurred loss experience of an insured;
 - b. The taxable premium is calculated as follows: (Payroll x applicable rate x experience modification rate) - premium discount.
 3. Retrospective plan:
 - a. A plan that provides for a relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of an insured, and the actual incurred losses for the tax year;
 - b. Plan is calculated annually and premium is not subject to further adjustment during the tax year;
 - c. The net taxable premium is calculated as follows: (payroll x applicable rate x experience modification rate x basic premium factor) + (losses for current year + adjusted losses for premium year x conversion factor) x tax multiplier; and
 - d. The net taxable premium is subject to a maximum and minimum premium level depending on which 1 of the 4 rating insurance option plans specified in

the rating system filed by the rating organization is used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4;

- B. A pool shall not select a retrospective plan unless the pool meets the following criteria:
1. The pool has an annual net taxable premium exceeding \$100,000; and
 2. The pool submits and calculates 4 years of data concerning paid loss determinations and incurred loss reserved for each workers' compensation claim which information shall be used to calculate an experience modification factor for the pool. The oldest 3 years of data is used to calculate the rate and the current year data is used to calculate the tax.
- C. A pool shall submit to the Commission information required on the following forms no later than February 15 of each year:
1. Self-Insured Payroll Report, and
 2. Self-Insured Injury Report.
- D. Payment of quarterly tax.
1. The Commission shall calculate quarterly taxes owed under A.R.S. § 23-961(H) or A.R.S. § 23-1065(A) in 1 of the following ways:
 - a. 25% of the tax calculated for the previous year and adjusted for changes in the tax rate; or
 - b. Calculation based on actual payroll and premiums collected for each quarter.
 2. A pool shall file a completed and signed Self-Insurers' Quarterly Tax Payment Form with each quarterly tax payment.
 3. Quarterly payments are due April 30, July 31, October 31, and January 31, for the periods ending March 31, June 31, September 30, and December 31, respectively.
 4. Quarterly tax payments may be adjusted because of changes in the annual tax rate.
- E. After receipt of the information required under A.R.S. § 23-961 and this Article, the Commission shall determine the annual taxes owed by a pool. The Commission shall also determine whether the pool has underpaid or overpaid the annual taxes required to be paid by the pool. If the quarterly tax payments paid by a pool are less than the actual tax calculated for the year, then the pool shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If a pool has overpaid its annual taxes, then the Commission shall refund the amount as described in A.R.S. § 23-961(I). A pool shall pay to the Industrial Commission the pool's annual tax on or before March 31 based on premiums calculated for the preceding calendar year and adjusted for quarterly taxes previously paid.
- F. In addition to the penalty described under A.R.S. § 23-961(J), failure to pay annual or quarterly taxes as required is cause for revocation of a pool's certificate of authority.

R20-5-733. Review of Initial and Renewal Applications for Authority to Self-insure by the Division

- A. Upon the filing of a completed initial or renewal application for authority to self-insure, the Division shall review the initial or renewal application to determine and verify whether the information contained in and submitted with the initial or renewal application for authorization to self-insure is complete and accurate. The Division shall also review the information provided to determine the following:
1. Whether the pool has met the requirements of A.R.S. § 23-961.01;
 2. Whether the pool has met the requirements of this Article; and

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3. Whether the pool has the ability to process and pay benefits required under the Arizona Workers' Compensation Act. A determination of a pool's financial ability to pay shall include a review of the ratios provided by each member at the time of an initial application and review of the following ratios for a pool at the time of renewal:
 - a. Total cash, receivables, and investments to total assets; and
 - b. Total revenue to total expenditures for loss fund and trustee fund.
- B. The Division shall present the findings of its review described in subsection (A) to the Commission. The Division shall also present its recommendations to the Commission regarding an initial or renewal application.

R20-5-734. Decision by the Commission on Initial or Renewal Applications for Authority to Self-insure

- A. The Commission shall consider the following before granting or denying an initial or renewal application to self-insure:
 1. The information submitted by an applicant or pool.
 2. The information and recommendations of the Division, and
 3. The requirements of A.R.S. § 23-961.01 and this Article.
- B. The Commission shall deny an application for authority to self-insure if the Commission finds 1 or more of the following conditions:
 1. An applicant or pool does not meet the requirements of A.R.S. § 23-961.01.
 2. An applicant or pool does not meet the requirements of this Article, or
 3. An applicant or pool is unable to process and pay benefits required under the Arizona Workers' Compensation Act.
- C. A decision of the Commission shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. The Commission shall issue written findings and an order granting or denying authorization to self-insure.
- D. The Division shall mail a copy of the Commission's written findings and order upon the applicant or pool within 10 days of the date the Commission issues its findings and order.
- E. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide fidelity coverage with evidence of fidelity insurance coverage as required under R20-5-712 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual fidelity coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of fidelity coverage with evidence of fidelity coverage as required under this subsection.
- F. In the case of an initial application, an applicant shall substitute written confirmation from an authorized insurance carrier to provide excess insurance coverage with evidence of excess insurance coverage as required under R20-5-715 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant provides evidence of actual excess insurance coverage. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to substitute written confirmation of excess

insurance coverage with evidence of excess insurance coverage as required under this subsection.

- G. In the case of an initial application, an applicant shall deposit the guaranty bond, letter of credit, or other securities as required under R20-5-713 no later than 10 days after the Commission grants authority to self-insure under this Section. The grant of authority to self-insure under this Section shall not become effective until the applicant deposits the guaranty bond, letter of credit, or other security. The Commission shall deem an initial application withdrawn and the grant of authority to self-insure rescinded if an applicant fails to deposit the guaranty bond, letter or credit, or other securities as required under this subsection.
- H. Subject to subsections (E), (F), and (G), no later than 10 days after the Commission grants authorization to self-insure, the Division shall prepare a certificate of authority to self-insure and shall mail the certificate to the self-insured at the business address of the pool listed on the initial or renewal application.

R20-5-735. Right to Request a Hearing

- A. An applicant or pool shall have 10 days from the date the Commission mails the findings and order under R20-5-734 to request a hearing.
- B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or pool or the applicant's or pool's legal representative. The applicant or pool shall file the request for hearing with the Division.
- C. The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

R20-5-736. Hearing Rights and Procedures

- A. Burden of proof.
 1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or pool shall have the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 2. In a revocation hearing, the Commission shall have the burden of proof to establish that the self-insured has committed the acts described in R20-5-739.
- B. Roles of Chair and Chief Counsel.
 1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Division.
- C. Appearance by a party.
 1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.

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D. Filing and service.

1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant or pool shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.

E. Notice of hearing.

1. The Commission shall give the parties at least 20 days notice of hearing.
2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or pool as shown on the record of the Commission or upon the applicant's or pool's representative if a notice of appearance has been filed by a representative.
3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061(B).

F. Evidence.

1. The civil rules of evidence do not apply to hearings held under this Section.
2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
3. All witnesses at a hearing shall testify under oath or affirmation.
4. A party may present evidence and conduct cross-examination of witnesses.
5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
6. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
7. Upon written request by a party or upon direction from the Chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proven by them.

- G. Transcript of Proceedings.** Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.

R20-5-737. Decision Upon Hearing by Commission

- A.** A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-734(B) and shall be made by a majority vote of the quorum of Com-

mission members present when the decision is rendered at a public meeting.

- B.** A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-739 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- C.** A decision of the Commission to deny admission of an employer into a pool or deny authorization to add members without Commission approval shall be based upon the grounds in R20-5-721 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting.
- D.** After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.
- E.** A Commission decision is final unless an applicant or pool requests review under R20-5-738 no later than 15 days after the written decision is mailed to the parties.

R20-5-738. Request for Review

- A.** A party may request review of a Commission decision issued under R20-5-737 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
- B.** A request for review shall be based upon 1 or more of the following grounds which have materially affected the rights of a party:
1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C.** A request for review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D.** The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E.** The Commission's decision upon review is final unless an applicant or pool seeks judicial review as provided in A.R.S. § 23-946.

R20-5-739. Revocation of Authority to Self-Insure

- A.** In addition to those specific grounds set forth in this Article, the following constitute grounds for revocation of authority to self-insure for workers' compensation:
1. Failure to comply with requirements of this Article or applicable requirements of Article 1 of 20 A.A.C. 5;
 2. Failure to comply with applicable requirements of A.R.S. § 23-901 et seq.;
 3. Unless otherwise provided, failure to comply with an order or award of the Commission within 30 days after the order or award becomes final;
 4. An inability to process and pay claims under the Arizona Workers' Compensation Act;
 5. The failure of a pool to provide the Commission the reports and taxes required under this Article; and

- 6. The willful misstatement of any material fact in an application, report, or statement made to the Commission.
- B. Upon receipt of information demonstrating that a pool has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a pool's authority to self-insure, then the Division shall present its findings to the Commission.
- C. The Commission shall consider the findings and recommendation of the Division before revoking a pool's authority to self-insure.
- D. The Commission shall revoke a pool's authority to self-insure if the Commission finds 1 or more of the grounds set forth in subsection (A). The Commission shall issue written findings and an order revoking the authority to self-insure and shall serve a copy of the findings and order upon the pool.
- E. A pool shall have 10 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-736, R20-5-737, and R20-5-738 govern hearing rights and procedures for revocation hearings.
- G. A pool shall immediately inform each of its members, in writing, of the Commission's order of revocation.